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7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) 1:11-CR-00237-LJO
11)
Plaintiff,) MEMORANDUM OF PLEA AGREEMENT
12) PURSUANT TO RULE 11(c) OF THE
13) FEDERAL RULES OF CRIMINAL
v.) PROCEDURE
14)
15)
STEVE ZAVEN KESSEDJIAN,)
16)
Defendant.)
17)

18 Pursuant to Rule 11(c) of the Federal Rules of Criminal
19 Procedure, the United States of America, by and through Benjamin B.
20 Wagner, the United States Attorney for the Eastern District of
21 California, and Assistant United States Attorney Christopher D.
22 Baker; and defendant Steve Zaven Kessedjian and his attorney, Alex R.
23 Kessel, have agreed as follows:

24 1. Scope of Agreement

25 This document contains the complete Memorandum of Plea Agreement
26 ("Plea Agreement") between the United States Attorney's Office for
27 the Eastern District of California ("Government") and defendant
28

1 defendant Steve Zaven Kessedjian regarding this case. This Plea
2 Agreement is limited to the United States Attorney's Office for the
3 Eastern District of California and cannot bind any other federal,
4 state, or local prosecuting, administrative, or regulatory
5 authorities.

6 2. Charges

7 Defendant Steve Zaven Kessedjian acknowledges that he has been
8 charged in the Indictment as follows:

9 Mail Fraud in violation of Title 18, United States Code,
10 Section 1341 (1 count); and

11 Criminal Forfeiture pursuant to Title 18, United States Code,
12 Section 982(a)(1)(C) and Title 28, United States Code, Section
13 2461(c).

14 3. Nature, Elements and Possible Defenses

15 Defendant Steve Zaven Kessedjian has read the charges against
16 him contained in the Indictment, and those charges have been fully
17 explained to him by his attorney. Further, defendant fully
18 understands the nature and elements of the crimes in the Indictment
19 to which he is pleading guilty, together with the possible defenses
20 thereto, and has discussed them with his attorney.

21 **MAIL FRAUD: (Count One):**

22 The elements of the crime of Mail Fraud are:

23 First, the defendant devised a scheme to defraud or plan for
24 obtaining money or property by false or fraudulent
pretenses, representations, or promises;

25 Second, the defendant knew that the promises or statements
26 were false;

27 Third, the false or fraudulent pretenses, representations, or
28 promises were material; that is, they had a natural
tendency to influence, or were capable of influencing,
a person to part with money or property;

1 Fourth, the defendant acted with the intent to defraud; and
2 Fifth, defendant used, or caused to be used, the mails to
3 carry out or attempt to carry out an essential part of
the scheme.

4 4. Agreements by Defendant

5 (a) Defendant agrees that this Plea Agreement shall be filed
6 with the Court and become a part of the record of the case.

7 (b) Defendant agrees to enter a plea of guilty to Count One of
8 the Indictment which charges him with Mail Fraud in violation of
9 Title 18, United States Code, Section 1341.

10 (c) Defendant understands and agrees that he will not be
11 allowed to withdraw his plea should the Court fail to follow the
12 United States' sentencing recommendations.

13 (d) Defendant further acknowledges that his plea of guilty is
14 voluntary and that no force, threats, promises or representations
15 have been made to anybody, nor agreement reached, other than those
16 set forth expressly in this Plea Agreement, to induce the defendant
17 to plead guilty.

18 (e) Defendant knowingly and voluntarily waives his
19 Constitutional and statutory rights to appeal his plea, conviction,
20 forfeiture order, restitution order and sentence. This waiver of
21 appeal includes, but is not limited to, an express waiver of the
22 defendant's right to appeal his plea, conviction, order of
23 forfeiture, order of restitution and sentence on any ground,
24 including any appeal right conferred by 18 U.S.C. § 3742. The
25 defendant further agrees not to contest his plea, conviction, order
26 of forfeiture, order of restitution and sentence in any post-
27 conviction proceeding, including but not limited to a proceeding
28 under 28 U.S.C. § 2255.

1 (f) Defendant agrees that his base offense level for Mail Fraud
2 shall be seven (7) pursuant to Section 2B1.1(a)(1) of the United
3 States Sentencing Commission Guidelines Manual, plus six (6) levels
4 for a loss more than \$30,000.00 but less than \$70,000.00 pursuant to
5 Section 2B1.1(b)(1)(D), plus two (2) levels for abuse of position of
6 trust or use of special skill pursuant to Section 3B1.3.

7 (g) Defendant understands and agrees that the Court must
8 consult the Federal Sentencing Guidelines (as promulgated by the
9 Sentencing Commission pursuant to the Sentencing Reform Act of 1984,
10 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by
11 United States v. Booker and United States v. Fanfan, 543 U.S. 220,
12 125 S. Ct. 738 (2005)), and must take them into account when
13 determining a final sentence. Defendant understands that the Court
14 will determine a non-binding and advisory guideline sentencing range
15 for this case pursuant to the Sentencing Guidelines. Defendant
16 further understands that the Court will consider whether there is a
17 basis for departure from the guideline sentencing range (either above
18 or below the guideline sentencing range) because there exists an
19 aggravating or mitigating circumstance of a kind, or to a degree, not
20 adequately taken into consideration by the Sentencing Commission in
21 formulating the Guidelines. Defendant further understands that the
22 Court, after consultation and consideration of the Sentencing
23 Guidelines, must impose a sentence that is reasonable in light of the
24 factors set forth in 18 U.S.C. § 3553(a).

25 (h) Defendant understands and agrees that the Court, in making
26 its sentencing decision, may take into consideration any and all
27 facts and circumstances concerning defendant's criminal activities,
28 including activities which may not have been charged in the

1 Indictment. If the Court should impose any sentence up to the
2 statutory maximum, defendant understands that he cannot for that
3 reason withdraw his guilty plea, and he will remain bound to fulfill
4 all of the obligations under this Plea Agreement. Defendant
5 understands that neither the prosecutor, defense counsel, nor the
6 Court can make or have made any promise regarding the sentence
7 defendant will receive.

8 (i) Defendant agrees not to move for any downward adjustments
9 in his offense level under either Chapters Two, Three, Four and/or
10 Five of the Sentencing Guidelines. The defendant understands and
11 agrees that this agreement by him includes, without limitation, not
12 moving for a downward departure and/or variance of his offense level,
13 criminal history category or criminal history points as defined by
14 the Sentencing Guidelines. Additionally, the defendant agrees that
15 the application of the Sentencing Guidelines to his case results in a
16 reasonable sentence.

17 The defendant also agrees not to move for a downward variance of
18 his sentence under the factors set forth in 18 U.S.C. § 3553, except
19 that the defendant may move for a downward variance/departure
20 pursuant to 18 U.S.C. § 3553 if and only if, prior to the date set by
21 Court for defendant's sentencing hearing, he pays restitution in the
22 full amount as set forth in Section 4(j) (\$66,490.81). The defendant
23 acknowledges that, if the defendant requests or suggests in any
24 manner a different sentence than what is called for under the
25 Sentencing Guidelines and Section 4(i) of this Plea Agreement, the
26 Government, at its sole discretion, may withdraw from this plea
27 agreement and continue with its prosecution of the defendant as if
28 the parties had not entered into this Plea Agreement.

1 (j) Defendant agrees that the conduct to which he is pleading
2 guilty requires mandatory restitution pursuant to Section
3 3663A(c)(1)(A)(ii) of Title 18, United States Code, and agrees to pay
4 the full amount of restitution as ordered by the Court to the victims
5 in this case in an amount of at least \$66,490.81 (including
6 \$57,333.57 to victims C.S. and F.S. and \$9,157.24 to victim C.F.) and
7 to all other victims affected by these offenses, including, but not
8 limited to, any victims covered in the Factual Basis and any victims
9 directly or indirectly harmed by the defendant's criminal conduct in
10 the course of the scheme pursuant to 18 U.S.C. § 3663A(a)(2) and (3).

11 (k) Defendant agrees to make a full and complete disclosure of
12 defendant's assets and financial condition, and will complete the
13 United States Attorney's Offices' "Right to Financial Privacy Act
14 Waiver and Authorization to Release Information" and "Financial
15 Affidavit" within five (5) weeks from the entry of the defendant's
16 change of plea. The defendant also agrees to have the court enter an
17 order to that effect.

18 (l) Defendant agrees to waive all rights under the "Hyde
19 Amendment," Pub. L. No. 105-109, § 617, 111 Stat. 2519 (1997), to
20 recover attorneys' fees or other litigation expenses in connection
21 with the investigation and prosecution of all charges in the above-
22 captioned matter and of any related allegations (including without
23 limitation any charges to be dismissed pursuant to this Plea
24 Agreement and any charges previously dismissed).

25 (m) Defendant agrees to forfeit to the United States
26 voluntarily and immediately all right, title, and interest to any and
27 all assets subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C)
28

1 and 28 U.S.C. § 2461. Those assets include, but are not limited to,
2 the following:

3 A personal forfeiture money judgment in the amount of
4 \$66,490.81.

5 Further, Defendant agrees that the amount of \$66,490.81 is a
6 reasonable reflection of the amount that the defendant obtained
7 directly or indirectly, as the result of the underlying criminal
8 scheme and a violation of Title 18, United States Code, Section 1341.
9 As part of the imposition of the personal forfeiture money judgement,
10 the Defendant agrees to provide this Office with signed waivers
11 related to federal and state income tax returns, and the Defendant
12 agrees to complete and sign the "Right to Financial Privacy Act
13 Waiver and Authorization to Release Information."

14 Defendant agrees to fully assist the government in the
15 forfeiture of the above-listed money judgment. To the extent allowed
16 by law, any money collected pursuant to the money judgment shall be
17 applied to restitution. Defendant shall not sell, transfer, convey,
18 or otherwise dispose of any assets found to be connected to the
19 criminal events charged in the Indictment.

20 Defendant agrees not to file a claim to any of the seized
21 property in any criminal proceeding or civil proceeding,
22 administrative or judicial, which is or may be initiated. Defendant
23 agrees to waive right to notice of any forfeiture proceeding
24 involving such property, and agrees to not file a claim or assist
25 others in filing a claim in such a proceeding.

26 The defendant waives the notice provisions of Fed. R. Crim. P.
27 7(c) and 32.2(a), waives oral pronouncement of forfeiture at the time
28 of sentencing and any defects in such pronouncement that pertain to

1 forfeiture, and waives any defenses to forfeiture, including any
2 defense predicated on the Ex Post Facto, Double Jeopardy, and
3 Excessive Fines Clauses of the United States Constitution. The
4 defendant knowingly and voluntarily waives any right to jury trial in
5 any criminal or civil forfeiture proceeding.

6 5. Agreements by the United States

7 (a) The United States will recommend a two-level reduction (if
8 the offense level is less than 16) or a three-level reduction (if the
9 offense level reaches 16) in the computation of defendant's offense
10 level, if defendant clearly demonstrates acceptance of responsibility
11 for his conduct as defined in Section 3E1.1 of the United States
12 Sentencing Commission Guidelines Manual.

13 (b) The United States agrees that Defendant's base offense
14 level for Mail Fraud shall be seven (7) pursuant to Section
15 2B1.1(a)(1) of the United States Sentencing Commission Guidelines
16 Manual, plus six (6) levels for a loss more than \$30,000.00 but less
17 than \$70,000.00 pursuant to Section 2B1.1(b)(1)(D), plus two (2)
18 levels for abuse of position of trust or use of special skill
19 pursuant to Section 3B1.3.

20 (c) Defendant acknowledges and understands that the government
21 makes no other representations to him regarding fines, whether any
22 other specific offense characteristics apply to his conduct, the
23 restitution owed, his criminal history or criminal history points
24 under Chapter Four or whether additional enhancements or reductions
25 under Chapter Three or Five of the Sentencing Guidelines apply and
26 defendant understands that the government is free to comment and to
27 make recommendations to the court and the probation office regarding
28 those matters.

1 6. Factual Basis

2 Defendant will plead guilty because he is in fact guilty of
3 Mail Fraud as charged in Count One of the Indictment. Defendant also
4 agrees that the following are the facts of this case, although he
5 acknowledges that, as to other facts, the parties may disagree -

6 Beginning at a date no later than December 2007 and
7 continuing through Spring 2008, in the State and Eastern
8 District of California and elsewhere, defendant Steve Zaven
9 Kessedjian devised and intended to devise a scheme and
artifice to defraud individuals of money, and obtained money
from individuals by means of materially false and fraudulent
pretenses, representations and promises.

10 Specifically, defendant's company Amerilend was in the
11 business of helping homeowners secure loans to refinance
12 their homes. When a loan was funded, Amerilend would use
13 Targa Escrow, another business owned by defendant to disperse
14 the escrow funds. In December 2007, victims C.S. and F.S.
15 used Amerilend services and applied for a loan to refinance
16 their home and pay off their credit cards. The loan was
secured through Wachovia Bank in the amount of \$208,000 and
was scheduled to close and fund on February 14, 2008. As
directed in the escrow instructions, Wachovia paid off the
first mortgage on the victims' residence in the amount of
\$151,044.37.

17 On February 15, 2008, Wachovia Bank then wired the remainder
18 of the loan proceeds, \$57,343.57 to the Targa Escrow trust
19 account. Instead of dispersing the proceeds to the victims'
credit card companies as directed by the escrow instructions,
defendant took the funds for his own purposes.

20 On February 28, 2008, the defendant then personally called
21 the victims C.S. and F.S. and told them that they should
22 receive their money the following day. These statements and
23 others were materially false and fraudulent and known by the
24 defendant to be false and fraudulent. As further part of his
scheme to defraud, defendant caused the HUD-1 settlement
statement to be changed to show no money being due out of
escrow proceeds. At all times herein, defendant acted with
the intent to defraud.

25 On or about May 14, 2008, in an effort to lull C.S. and F.S.,
26 and in furtherance of his scheme and artifice to defraud,
27 defendant signed checks payable to C.S. and F.S. and their
28 credit card companies, purportedly as repayment for their
escrow funds he had taken. Defendant caused the checks to be
mailed via U.S. Postal Service to C.S. and F.S. in Jamestown,
California, in the Eastern District of California. When the
checks were presented to the bank, the checks were not

1 honored as there were insufficient funds in defendant's
2 account to cover the checks.

3 As a result of his actions, defendant caused a loss to his
4 victims of at least \$66,490.81, representing the balances due
5 to C.S. and F.S. from escrow and unrelated loss caused to an
6 additional victim. Defendant's actions resulted in C.S. and
7 F.S. declaring bankruptcy because they could not make
8 payments on both the larger refinanced loan defendant's
9 company secured for them and the credit card debts which were
10 to have been paid off with the funds taken by defendant.
11 C.S. and F.S. suffered adverse consequences to their credit
12 reports and credit scores as a result of having declared
13 bankruptcy.

14 7. Potential Sentence

15 The following is the maximum potential sentence that Defendant
16 faces:

- 17 (a) Imprisonment.
18 Maximum: Twenty (20) years.
- 19 (b) Fine.
20 Maximum: Two Hundred and Fifty Thousand
21 (\$250,000.00).
- 22 (c) Both such fine and imprisonment.
- 23 (d) Restitution - Mandatory.
- 24 (e) Term of Supervised Release.
25 Maximum: Three(3) years.

26 (Should the defendant violate any of the terms of his
27 supervised release, he can be returned to prison for
28 the period of supervised release actually imposed by
the Court or two (2) years, whichever is less.)

- (f) Penalty Assessment.
Mandatory: One Hundred (\$100.00).

Defendant also agrees that the Court can order the payment of
restitution for the full loss caused by defendant's wrongful conduct.
Defendant agrees that the restitution order is not restricted to the
amounts alleged in the specific count to which he is pleading guilty.

8. Waiver of Rights

Defendant understands that by pleading guilty he surrenders

1 certain rights, including the following:

2 (a) If defendant persisted in a plea of not guilty to the
3 charges against him, he would have the right to be represented by an
4 attorney at all stages of the proceedings, and would have a right to
5 a public and speedy trial. The trial could be either a jury trial or
6 a trial by a judge sitting without a jury. Defendant has a right to
7 a jury trial. However, in order that the trial be conducted by the
8 judge sitting without a jury, Defendant, the United States and the
9 Court must all agree that the trial be conducted by the judge without
10 a jury.

11 (b) If the trial were a jury trial, the jury would be
12 composed of twelve lay persons selected at random. Defendant and his
13 attorney would have a say in who the jurors would be by removing
14 prospective jurors for cause where actual bias or other
15 disqualification is shown, or without cause by exercising peremptory
16 challenges. The jury would have to agree unanimously before it could
17 return a verdict of either guilty or not guilty. The jury would be
18 instructed that Defendant is presumed innocent and that it could not
19 convict him unless, after hearing all the evidence, it was persuaded
20 of his guilt beyond a reasonable doubt.

21 (c) If the trial were held before a judge without a jury,
22 the judge would find the facts and determine, after hearing all the
23 evidence, whether or not he was persuaded of the defendant's guilt
24 beyond a reasonable doubt.

25 (d) At a trial, whether by a jury or a judge, the United States
26 would be required to present its witnesses and other evidence against
27 the Defendant. Defendant would be able to confront those government
28 witnesses and his attorney would be able to cross-examine them. In

1 turn, Defendant could present witnesses and other evidence on his own
2 behalf. If the witnesses for Defendant would not appear voluntarily,
3 he could require their attendance through the subpoena power of the
4 Court. At trial, the Defendant would also have the right to
5 assistance of legal counsel. If he could not afford legal counsel,
6 one would be appointed for him by the Court at no expense to him.

7 (e) At a trial, Defendant would have a privilege against self-
8 incrimination so that he could decline to testify, and no inference
9 of guilt could be drawn from this refusal to testify.

10 Defendant understands that by pleading guilty he is waiving all
11 of the rights set forth above. Defendant acknowledges that his
12 attorney has explained to him those rights and the consequences of
13 his waiver of such rights.

14 9. Right to Counsel

15 Defendant understands that he has a right to counsel throughout
16 his case from his initial appearance through his trial or guilty
17 plea, or any dismissal of the case against him, and through and
18 including any sentencing. If not for the waiver of appeal rights in
19 this Plea Agreement, defendant would also have a right to counsel on
20 a direct appeal in his case. Defendant understands that the right to
21 counsel includes the provision of defense counsel through the Court
22 if defendant cannot afford to hire counsel.

23 10. Questions by the Court

24 Defendant understands that, if the Court questions him under
25 oath, on the record, and in the presence of counsel about the offense
26 to which he has pleaded guilty, his answers, if false, may later be
27 used against him in a prosecution for perjury.

28 ///

1 11. Entire Plea Agreement

2 Other than this Plea Agreement, no agreement, understanding,
3 promise, or condition exists between the United States and defendant.
4 Nor will any such agreement, understanding, promise, or condition
5 exist unless it is committed to writing and signed by defendant,
6 counsel for defendant, and counsel for the United States.

7 12. Court not a Party

8 It is understood by the parties that the sentencing Court is
9 neither a party to nor bound by this agreement. Sentencing is a
10 matter solely within the discretion of the Court. The Court is under
11 no obligation to accept any recommendations made by the United
12 States, and the Court may in its discretion impose any sentence it
13 deems appropriate up to and including the statutory maximum set forth
14 in Section 7 above.

15 13. Presentence Report

16 Defendant understands that the United States Probation Office is
17 not a party to this agreement and will conduct an independent
18 investigation of defendant's activities and his background. It will
19 then prepare a presentence report which it will submit to the Court
20 as its independent sentencing recommendation. In addition, the
21 United States will fully apprise the Probation Office, as well as the
22 Court, of the full and true nature, scope and extent of defendant's
23 criminal activities, including information on his background and

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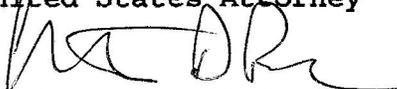
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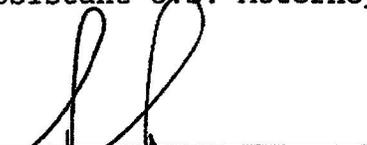
criminal history.

Dated: 9/19/2013

BENJAMIN B. WAGNER
United States Attorney

By: 
CHRISTOPHER D. BAKER
MICHAEL G. TIERNEY
Assistant U.S. Attorneys

Dated: 9-19-13


~~STEVE ZAVEN KESSEDJIAN~~
Defendant

Dated: 9-19-13


ALEX R. KESSEL
Attorney for Defendant
Steve Zaven Kessedjian