

Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

THEODORE KAI SILVA,

Defendant.

NO. CR19-194-02JLR

PLEA AGREEMENT

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and James D. Oesterle and Jonas Lerman, Assistant United States Attorneys for this District, Defendant Theodore Kai Silva, and Defendant's attorney, Peter A. Camiel, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).

1. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charge contained in the Indictment:

a. Conspiracy to Commit Money Laundering, as charged in Count 13, in violation of Title 18, United States Code, Section 1956(h).

1 By entering a plea of guilty, Defendant hereby waives all objections to the form of
 2 the charging document. Defendant further understands that before entering any guilty
 3 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
 4 may be used by the United States in a prosecution for perjury or false statement.

5 2. **Elements of the Offense.** The elements of the offense to which Defendant
 6 is pleading guilty, Conspiracy to Commit Money Laundering, as charged in Count 13, are as
 7 follows:

8 *First*, beginning on or about January 1, 2013, and continuing until on or about
 9 April 26, 2017, there was an agreement between two or more persons to launder money;

10 *Second*, the defendant became a member of the conspiracy knowing of at least one
 11 of its objects and intending to help accomplish it; and

12 *Third*, one of the members of the conspiracy performed at least one overt act for
 13 the purpose of carrying out the conspiracy.

14 The specific elements of the offense of money laundering are as follows:

15 *First*, the defendant or one or more of the defendant's co-conspirators conducted
 16 or intended to conduct a financial transaction involving property that represented the
 17 proceeds of wire fraud, or of the sale of contraband smokeless tobacco;

18 *Second*, the defendant or one or more of the defendant's co-conspirators knew that
 19 the property represented the proceeds of some form of unlawful activity; and

20 *Third*, the defendant or one or more of the defendant's co-conspirators knew that
 21 the transaction was designed in whole or in part to conceal or disguise the nature,
 22 location, source, ownership, or control of the proceeds, or to avoid a transaction reporting
 23 requirement under state or federal law.

24 3. **The Penalties.** Defendant understands that the statutory penalties
 25 applicable to the offense to which Defendant is pleading guilty, Conspiracy to Commit
 26 Money Laundering as charged in Count 13, are as follows: a term of imprisonment of not
 27 more than twenty years, a fine of not more than \$500,000 or twice the amount involved in
 28 the transactions, whichever is greater, a period of supervision following release from

1 | prison of up to 3 years, and a mandatory special assessment of \$100. If a probationary
2 | sentence is imposed, the probation period can be for up to 5 years.

3 | Defendant understands that supervised release is a period of time following
4 | imprisonment during which Defendant will be subject to certain restrictive conditions and
5 | requirements. Defendant further understands that if supervised release is imposed and
6 | Defendant violates one or more of the conditions or requirements, Defendant could be
7 | returned to prison for all or part of the term of supervised release that was originally
8 | imposed. This could result in Defendant serving a total term of imprisonment greater than
9 | the statutory maximum stated above.

10 | Defendant understands that as a part of any sentence, in addition to any term of
11 | imprisonment and/or fine that is imposed, the Court may order Defendant to pay
12 | restitution to any victim of the offense, as required by law.

13 | Defendant further understands that the consequences of pleading guilty may
14 | include the forfeiture of certain property, either as a part of the sentence imposed by the
15 | Court, or as a result of civil judicial or administrative process.

16 | Defendant agrees that any monetary penalty the Court imposes, including the
17 | special assessment, fine, costs, or restitution, is due and payable immediately and further
18 | agrees to submit a completed Financial Statement of Debtor form as requested by the
19 | United States Attorney's Office.

20 | **4. Immigration Consequences.** Defendant recognizes that pleading guilty
21 | may have consequences with respect to Defendant's immigration status if Defendant is
22 | not a citizen of the United States. Under federal law, a broad range of crimes are grounds
23 | for removal, and some offenses make removal from the United States presumptively
24 | mandatory. Removal and other immigration consequences are the subject of a separate
25 | proceeding, and Defendant understands that no one, including Defendant's attorney and
26 | the Court, can predict with certainty the effect of a guilty plea on immigration status.
27 | Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any
28 |

1 immigration consequences that Defendant's guilty plea may entail, even if the
2 consequence is Defendant's mandatory removal from the United States.

3 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
4 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 5 a. The right to plead not guilty and to persist in a plea of not guilty;
- 6 b. The right to a speedy and public trial before a jury of Defendant's
7 peers;
- 8 c. The right to the effective assistance of counsel at trial, including, if
9 Defendant could not afford an attorney, the right to have the Court
10 appoint one for Defendant;
- 11 d. The right to be presumed innocent until guilt has been established
12 beyond a reasonable doubt at trial;
- 13 e. The right to confront and cross-examine witnesses against Defendant
14 at trial;
- 15 f. The right to compel or subpoena witnesses to appear on Defendant's
16 behalf at trial;
- 17 g. The right to testify or to remain silent at trial, at which trial such
18 silence could not be used against Defendant; and
- 19 h. The right to appeal a finding of guilt or any pretrial rulings.

20 **6. United States Sentencing Guidelines.** Defendant understands and
21 acknowledges that the Court must consider the sentencing range calculated under the
22 United States Sentencing Guidelines and possible departures under the Sentencing
23 Guidelines together with the other factors set forth in Title 18, United States Code,
24 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
25 history and characteristics of Defendant; (3) the need for the sentence to reflect the
26 seriousness of the offense, to promote respect for the law, and to provide just punishment
27 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
28 conduct; (5) the need for the sentence to protect the public from further crimes of

Defendant; (6) the need to provide Defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine Defendant's Sentencing Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Department, or by any stipulations or agreements between the parties in this Plea Agreement; and

d. Defendant may not withdraw a guilty plea solely because of the sentence imposed by the Court.

7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

8. **Statement of Facts.** The parties agree on the following facts. Defendant admits he is guilty of the charged offense:

a. TK Mac Enterprises, Inc. ("TK Mac") purchased and sold wholesale cigarette and non-cigarette tobacco products. TK Mac was licensed by the Washington State Department of Revenue (WADOR) as a tobacco product distributor since September 2005. TK Mac also operated two retail locations, one in Federal Way, Washington ("TK Mac South") and the other in Lynnwood, Washington ("TK Mac North").

b. Riverside Smoke Shop ("Riverside"), D&A Smoke Shop ("D&A"), and Valley Smoke Shop ("Valley") are commonly owned smoke shops located on the Puyallup Indian Reservation (collectively the "Puyallup Tribal Smoke Shops"). K.P. was the listed owner of the Puyallup Tribal Smoke Shops. From no later than 2012 through at

1 least April 26, 2017, Anthony Paul operated as the true owner of the Puyallup Tribal
2 Smoke Shops and oversaw the business operations of the Puyallup Tribal Smoke Shops.

3 c. From no later than 2012 through at least April 26, 2017, Defendant
4 THEODORE KAI SILVA operated as the general manager of Riverside. In that role,
5 THEODORE KAI SILVA was responsible for the payment of tobacco and other products
6 purchased by the Puyallup Tribal Smoke Shops. THEODORE KAI SILVA also had
signature authority on the bank accounts of Riverside and D&A. THEODORE KAI
SILVA worked under, and took direction from, Anthony Paul.

7
8 d. TK Mac was operated by Hyung II Kwon and Tae Young Kim,
9 THEODORE KAI SILVA was aware that Anthony Paul made several of what Silva
believed to be loans to TK Mac totaling over \$400,000 and that TK Mac had a large
10 balance with the Tribal Smoke shops. Based on these, THEODORE KAI SILVA
believed Anthony Paul had a business relationship with Kwon.

11
12 e. TK Mac purchased significant quantities of tobacco products from
the Puyallup Tribal Smoke Shops. A majority of the purchases were cash transactions.
13 The tobacco products purchased by TK Mac from the Puyallup Tribal Smoke Shops were
subsequently sold by TK Mac through their two retail locations, generating cash
14 proceeds.

15
16 f. In approximately 2013, Anthony Paul advised THEODORE KAI
SILVA that a TK Mac representative would be delivering a substantial amount of bulk
17 cash to THEODORE KAI SILVA, together with invoices purporting to document the
delivery of tobacco products from TK Mac to the Puyallup Tribal Smoke Shops. Anthony
18 Paul further advised THEODORE KAI SILVA that no actual tobacco products would be
delivered with the bulk cash and invoices. Anthony Paul instructed THEODORE KAI
19 SILVA to issue the TK Mac representative two checks payable to TK Mac in amounts
20 equal to the tendered invoices.

21
22 g. THEODORE KAI SILVA did not question Anthony Paul about why
the cash-for-check exchange was being done when he was initially told to accept the bulk
23 cash and issue the checks. He suspected the exchange was not being done for a legitimate
business purpose because the invoices presented by TK Mac representatives were false.
24 The invoiced products were not delivered to the Puyallup Smoke Shops.

25
26 h. The cash-for-check exchanges occurred once or twice a month.
After three or forth exchanges, THEODORE KAI SILVA asked Anthony Paul whether
27 Paul understood the purpose of the exchanges. Paul's answer was non-responsive.
THEODORE KAI SILVA accepted the answer without inquiring further. The exchanges
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1 continued unabated for approximately four years before ending in early 2017 after TK
2 Mac's business locations were searched by federal law enforcement officers.

3 i. The cash and false invoices were delivered exclusively to
4 THEODORE KAI SILVA, who knew at the time that the invoices were generated solely
5 to create the false impression that TK Mac was in fact selling tobacco products to the
6 Puyallup Tribal Smoke Shops and consequently generating fraudulent excise tax credits
7 as a result of those purported sales. THEODORE KAI SILVA prepared and issued
8 checks drawn on the Riverside and D&A bank accounts to TK Mac in amounts equal to
9 the false invoices. THEODORE KAI SILVA knew the Puyallup Tribal Smoke Shops
10 were not in fact receiving the invoiced tobacco products when he issued the checks. He
11 also knew, or understood there was a high probability, that TK Mac's submittal of false
12 invoices, together with the exchange of cash for checks, were integral steps in an
13 apparent money laundering scheme.

14 j. THEODORE KAI SILVA continued to facilitate the cash-for-check
15 exchanges despite being offered no explanation for why the practice continued with no
16 legitimate business purpose. He began suspecting that it was particularly likely that the
17 exchanges were part of an illegal money laundering operation. He shared his suspicions
18 with fellow employees of the Puyallup Tribal Smoke Shops who assisted him with
19 accounting for the bulk cash deliveries. He did not share his suspicions with Paul. He
20 deliberately avoided learning the true purpose of the exchanges despite being presented
21 with circumstances that led him to conclude he was participating in a money laundering
22 scheme.

23 k. Over the course of the described cash-for-check exchange scheme,
24 THEODORE KAI SILVA's issued checks to TK Mac totaling more than \$1.5 million but
25 less than \$3.5 million.

26 The parties agree that the Court may consider additional facts contained in the
27 Presentence Report (subject to standard objections by the parties) and/or that may be
28 presented by the United States or Defendant at the time of sentencing, and that the factual
statement contained herein is not intended to limit the facts that the parties may present to
the Court at the time of sentencing.

9. **Sentencing Factors.** The parties agree that the following Sentencing
Guidelines provisions apply to this case:

a. The base offense level is 7 (USSG §§ 2X1.1(a), 2S1.1 and 2B1.1(a)(1));

1 b. A 16-level increase because the loss amount is greater than \$1.5 million but
2 less than \$3.5 million (USSG § 2B1.1(b)(1)(I));

3 c. A 2-level increase because the conduct involved sophisticated means
4 (USSG § 2B1.1(b)(10)(c)); and

5 d. A 3-level decrease because the Defendant's role in the offense was
6 substantially less than the other participants (USSG § 3B1.2).

7 The parties agree they are free to present arguments regarding the applicability of
8 all other provisions of the United States Sentencing Guidelines. Defendant understands,
9 however, that at the time of sentencing, the Court is free to reject these stipulated
10 adjustments, and is further free to apply additional downward or upward adjustments in
11 determining Defendant's Sentencing Guidelines range.

12 10. **Acceptance of Responsibility.** At sentencing, *if* the Court concludes
13 Defendant qualifies for a downward adjustment acceptance for acceptance of
14 responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or
15 greater, the United States will make the motion necessary to permit the Court to decrease
16 the total offense level by 3 levels pursuant to USSG § 3E1.1(a) and (b), because
17 Defendant has assisted the United States by timely notifying the United States of
18 Defendant's intention to plead guilty, thereby permitting the United States to avoid
19 preparing for trial and permitting the Court to allocate its resources efficiently.

20 11. **Agreed Recommendation Regarding Imprisonment.** Pursuant to Federal
21 Rule of Criminal Procedure 11(c)(1)(B), and based on the specific facts and
22 circumstances of this case, particularly Defendant's limited role in the offense, the parties
23 agree to jointly recommend that the appropriate punishment to be imposed by the Court
24 at the time of sentencing is a term of probation of between 3 years and 5 years. The
25 parties agree that the government can recommend that the Court impose a condition that
26 the probationary term include a period of home confinement of no more than 24 months.
27 Defendant understands that this recommendation is not binding on the Court and the
28 Court may reject the recommendation of the parties and may impose any term of

1 imprisonment up to the statutory maximum penalty authorized by law. Defendant further
2 understands that he cannot withdraw a guilty plea simply because of the sentence
3 imposed by the Court. Except as otherwise provided in this Plea Agreement, the parties
4 are free to present arguments regarding any other aspect of sentencing.

5 12. **Restitution.** Defendant shall make restitution to the Washington State
6 Department of Revenue in the amount of \$25,000. This restitution obligation is not joint
7 and several with any other defendants convicted of the same scheme. The parties agree to
8 recommend that the loss incurred by the Washington State Department of Revenue
9 should be apportioned between the Defendant and the other defendants convicted of the
10 same scheme with the Defendant's agreed apportionment considered a fair reflection of
11 his relative contribution to the victim's losses and the Defendant's current economic
12 circumstances. Said amount shall be due and payable immediately and shall be paid in
13 accordance with a schedule of payments as proposed by the United States Probation
14 Office and ordered by the Court.

15 13. **Forfeiture of Assets.** Defendant understands that the forfeiture of property
16 is part of the sentence that must be imposed in this case. Defendant agrees to forfeit to the
17 United States immediately his right, title, and interest in all property that constitutes
18 proceeds of his commission of Conspiracy to Commit Wire Fraud. All such property is
19 forfeitable pursuant to Title 18, United States Code, Section 981(a)(1)(C), by way of Title
20 28, United States Code, Section 2461(c).

21 Defendant agrees to fully assist the United States in the forfeiture of this property
22 and to take whatever steps are necessary to pass clear title to the United States, including
23 but not limited to: surrendering title and executing any documents necessary to effect
24 forfeiture; assisting in bringing any property located outside the United States within the
25 jurisdiction of the United States; and taking whatever steps are necessary to ensure that
26 property subject to forfeiture is not sold, disbursed, wasted, hidden, or otherwise made
27 unavailable for forfeiture. Defendant also agrees not to file a claim to this property in any
28 federal forfeiture proceeding, administrative or judicial, that may be or has been initiated,

1 or to otherwise contest any federal forfeiture proceeding that may be or has been
2 initiated. Finally, Defendant agrees he will not assist any party who may file a claim to
3 this property in any federal forfeiture proceeding.

4 The United States reserves its right to proceed against any remaining property not
5 identified in this Plea Agreement, including any property in which Defendant has any
6 interest or control, if that property constitutes proceeds of his commission of Conspiracy
7 to Commit Wire Fraud.

8 14. **Abandonment of Contraband.** Defendant also agrees that, if any federal
9 law enforcement agency seized any illegal contraband that was in Defendant's direct or
10 indirect control, Defendant consents to the federal administrative disposition, official use,
11 and/or destruction of that contraband.

12 15. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
13 the United States Attorney's Office for the Western District of Washington agrees not to
14 prosecute Defendant for any additional offenses known to it as of the time of this Plea
15 Agreement based upon evidence in its possession at this time, and that arise out of the
16 conduct giving rise to this investigation, and moves to dismiss the remaining counts in
17 the Indictment at the time of sentencing. In this regard, Defendant recognizes the United
18 States has agreed not to prosecute all of the criminal charges the evidence establishes
19 were committed by Defendant solely because of the promises made by Defendant in this
20 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
21 Presentence Report, the United States Attorney's Office will provide the United States
22 Probation Office with evidence of all conduct committed by Defendant.

23 Defendant agrees that any charges to be dismissed before or at the time of
24 sentencing were substantially justified in light of the evidence available to the United
25 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
26 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
27 (1997).
28

1 16. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
 2 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 3 Agreement and Defendant may be prosecuted for all offenses for which the United States
 4 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 5 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 6 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
 7 Defendant has waived any objection to the re-institution of any charges that previously
 8 were dismissed or any additional charges that had not been prosecuted.

9 Defendant further understands that if, after the date of this Agreement, Defendant
 10 should engage in illegal conduct, or conduct that violates any conditions of release or the
 11 conditions of confinement (examples of which include, but are not limited to, obstruction
 12 of justice, failure to appear for a court proceeding, criminal conduct while pending
 13 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
 14 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 15 additional charges against Defendant or to seek a sentence that takes such conduct into
 16 consideration by requesting the Court to apply additional adjustments or enhancements in
 17 its Sentencing Guidelines calculations in order to increase the applicable advisory
 18 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 19 advisory Guidelines range. Under these circumstances, the United States is free to seek
 20 such adjustments, enhancements, departures, and/or variances even if otherwise
 21 precluded by the terms of the Plea Agreement.

22 17. **Waiver of Appellate Rights and Rights to Collateral Attacks.** Defendant
 23 acknowledges that, by entering the guilty plea required by this plea agreement, Defendant
 24 waives all rights to appeal from Defendant's conviction and any pretrial rulings of the
 25 Court. Defendant further agrees that, provided the Court imposes a custodial sentence
 26 that is within or below the Sentencing Guidelines range (or the statutory mandatory
 27 minimum, if greater than the Guidelines range) as determined by the Court at the time of
 28 sentencing, Defendant waives to the full extent of the law:

1 a. Any right conferred by Title 18, United States Code, Section 3742,
2 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
3 restitution order, probation or supervised release conditions, or forfeiture order (if
4 applicable); and

5 b. Any right to bring a collateral attack against the conviction and
6 sentence, including any restitution order imposed, except as it may relate to the
7 effectiveness of legal representation.

8 This waiver does not preclude Defendant from bringing an appropriate motion
9 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
10 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

11 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
12 attacking (except as to effectiveness of legal representation) the conviction or sentence in
13 any way, the United States may prosecute Defendant for any counts, including those with
14 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
15 Agreement.

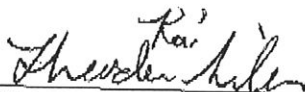
16 18. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into
17 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
18 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
19 Agreement or set forth on the record at the change of plea hearing in this matter.

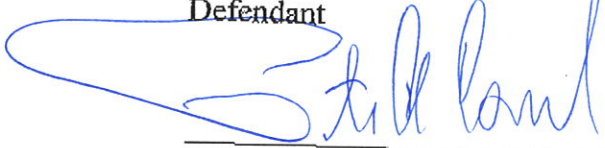
20 19. **Statute of Limitations.** In the event this Plea Agreement is not accepted by
21 the Court for any reason, or Defendant breaches any of the terms of this Plea Agreement,
22 the statute of limitations shall be deemed to have been tolled from the date of the Plea
23 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
24 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
25 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

26 20. **Completeness of Agreement.** The United States and Defendant
27 acknowledge that these terms constitute the entire Plea Agreement between the parties,
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1 except as may be set forth on the record at the change of plea hearing in this matter. This
2 Agreement binds only the United States Attorney's Office for the Western District of
3
4 Washington. It does not bind any other United States Attorney's Office or any other
5 office or agency of the United States, or any state or local prosecutor.

6 Dated this 27th day of September 2020.

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9 
10 THEODORE KAI SILVA
11 Defendant

12 
13 PETER A. CAMIEL
14 Attorney for Defendant

15 
16 JAMES D. OESTERLE
17 Assistant United States Attorney

18
19  for
20 JONAS LERMAN
21 Assistant United States Attorney
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