

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
v.  
MICHAEL TODD LUCAS,  
Defendant.

Case No. 21-cr-851-AJB

INFORMATION

Title 26, U.S.C. Sec. 7202 – Failure  
to Account For and Pay Over  
Federal Employment Taxes

The United States Attorney charges that:

**INTRODUCTORY ALLEGATIONS**

***PARTIES AND ENTITIES***

1. At all times relevant to this Information, Defendant MICHAEL TODD LUCAS controlled and operated TradeMotion, Inc., a corporation doing business in Del Mar, California, which is within the Southern District of California. TradeMotion, Inc. was an e-commerce business involved in the online marketplace for automotive dealers and manufacturers selling automotive parts and accessories to consumers. Defendant LUCAS controlled TradeMotion, Inc., exercising control over every aspect of the company's business affairs, including approving all payments by the company and controlling the company's business bank accounts.

2. During at least the period from September 2014 through December 2015, Defendant LUCAS caused TradeMotion, Inc. to make thousands of dollars of expenditures

1 for his personal benefit while, at the same time, failing to pay over to the Internal Revenue  
2 Service taxes withheld from Trademotion, Inc.'s employee' paychecks.

3 ***EMPLOYMENT TAX WITHHOLDING***

4 3. As an employer, TradeMotion, Inc. was required to withhold employment taxes  
5 from the wages paid to its workers, including federal income taxes, Medicare and social  
6 security taxes (often referred to as Federal Insurance Contribution Act or "FICA" taxes).  
7 These taxes will be referred to in this Information collectively as "payroll taxes." These  
8 withheld taxes are also commonly referred to as "trust fund taxes" because employers are  
9 required to hold them in trust for their employees. As an employer, was required to collect,  
10 account for and pay over trust fund taxes to the Internal Revenue Service (IRS), every  
11 calendar quarter (or three-month period). IRS rules and regulations required TradeMotion,  
12 Inc. to pay over these trust fund taxes, and to file accurate IRS Forms 941 to account for such  
13 taxes, within one month after the end of each quarter. In addition, TradeMotion, Inc. was  
14 required to account for and pay over its "employer's share" of the Social Security and  
15 Medicare taxes resulting from the employment of its employees.

16 4. At all times relevant to this Information, TradeMotion, Inc. withheld the  
17 requisite taxes from its employee's paychecks,

18 5. Trademotion, Inc. was required to make deposits of the payroll taxes to the  
19 Internal Revenue Service on a periodic basis. In addition, Trademotion, Inc. was required to  
20 file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax  
21 Return (Form 941), setting forth the total amount of wages and other compensation subject  
22 to withholding, the total amount of income tax withheld, the total amount of social security  
23 and Medicare taxes due, and the total tax deposits.

24 6. As the person in control of TradeMotion, Inc., defendant LUCAS was a  
25 "responsible person," that is, he had the corporate responsibility to collect, truthfully account  
26 for, and pay over Trademotion, Inc.'s payroll taxes.

27 7. During the calendar years 2014 and 2015, TradeMotion, Inc. withheld tax  
28 payments from its employees' paychecks. However, during that period, TradeMotion, Inc.

1 failed to pay over all of the payments withheld to the Internal Revenue Service, which were  
2 due quarterly.

3 **COUNT ONE**

4 ***FAILURE TO ACCOUNT FOR AND PAY OVER PAYROLL TAXES***

5 8. Beginning on or about January 1, 2015, and continuing up to and including on  
6 or about April 30, 2015, within the Southern District of California and elsewhere, defendant  
7 MICHAEL TODD LUCAS did willfully fail to truthfully account for and pay over to the IRS  
8 all of the federal income taxes withheld and Federal Insurance Contributions Act ("FICA")  
9 taxes due and owing to the United States on behalf of TradeMotion, Inc. and its employees,  
10 for the first quarter of 2015, which ended on March 31, 2015.

11 All in violation of Title 26, United States Code, Section 7202.

12 ROBERT S. BREWER JR.  
13 United States Attorney

14 *Charles A. O'Reilly*  
15

16 STEPHEN K. MOULTON  
17 CHARLES A. O'REILLY  
18 Special Assistant U.S. Attorneys  
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## UNITED STATES DISTRICT COURT

for the Southern District of California

United States of America )  
 v. )  
 )  
 Michael Todd Lucas )  
 Defendant )

Case No. 21CR0851-AJB

FILED

MAR 31 2021

CLERK, U.S. DISTRICT COURT  
SOUTHERN DIST. OF CALIFORNIA  
PNC DEF 100

## PRETRIAL RELEASE ORDER

IT IS ORDERED that the defendant's release is subject to these conditions:

Mandatory Conditions

- (1) The defendant must not violate federal, state, or local law during the period of release. *PNC*  
 (2) The defendant must cooperate in the collection of a DNA sample as authorized by 42 U.S.C. § 14135a.

Standard Conditions*(Each Standard Condition applies, unless stricken.)*

- (3) The defendant must appear in court as ordered and surrender as directed to serve any sentence.  
 (4) The defendant must not possess or attempt to possess a firearm, destructive device, or other dangerous weapon. The defendant must legally transfer all firearms, as directed by Pretrial Services.  
 (5) The defendant must not use or possess a narcotic drug or other controlled substance without a lawful medical prescription. The defendant must not use or possess marijuana under any circumstances.  
 (6) The defendant must report to the U.S. Pretrial Services Office (telephone (619) 557-5738) on the day of the initial court appearance or within 24 hours of the defendant's release from custody, whichever is later. Throughout this case, the defendant must report as directed by the Pretrial Services Office and follow all directions of the Pretrial Services Office.  
 (7) The defendant must advise the Court or the Pretrial Services Office in writing of: (1) the defendant's current residence address and phone number, when first reporting to Pretrial Services; and (2) any new contact information, before making any change of residence or phone number.  
 (8) The defendant must read this Pretrial Release Order and the "Advice of Penalties and Sanctions" form, or have them read to the defendant in the defendant's native language. The defendant must acknowledge the defendant's understanding of all the pretrial release conditions and the penalties and sanctions for any violations, by signing the "Advice of Penalties and Sanctions" form.

- (9) Restrict travel to:  San Diego County  Imperial County  State of California  
 Orange County and Los Angeles County  
 CDCA (L.A., Orange, Riverside, San Bernardino, S.L.O., Santa Barbara, Ventura)  
 Do not enter Mexico  Other Travel Restriction: *work purpose*  
 Travel may be expanded within the State of California, in PTS's discretion.

Additional Conditions

- (10)  (a) The defendant is released on personal recognizance.  
 (b) The defendant must execute an appearance bond in the amount of \$ \_\_\_\_\_ that is:  
 Unsecured.  
 Secured, as set forth below. The Court finds that an unsecured bond will not reasonably assure the defendant's appearance as required and/or will endanger the safety of another person or the community.  
 Security:  The co-signatures of \_\_\_\_\_ financially responsible (and related) adults or \_\_\_\_\_.  
 A cash deposit with the Court of \$ \_\_\_\_\_ by defendant or surety.  
 A trust deed to the United States on real property approved by a federal judge.  
 A cash bond and/or a bail bond by an approved, solvent corporate surety. A corporate bail bond must cover all conditions of release, not just appearances.  
 Other: \_\_\_\_\_.

Hearing:  Surety examination  Nebbia hearing (bail source hearing)

- (11)  18 U.S.C. § 3142(d) hold until \_\_\_\_\_; if no detainer is lodged by then, these conditions take effect.

- (12) The defendant must:

- (a) actively seek or continue full-time employment, or schooling, or a combination of both.
  - (b) reside  with a family member, surety, or \_\_\_\_\_, or  at a residence approved by the Pretrial Services Office, including any contract facility.
  - (c) surrender any valid passport to the Pretrial Services Office and not obtain a passport or other international travel document.
  - (d) clear all warrants/FTAs and pay all fines within 90 days of release or as directed by the Pretrial Services Office.
  - (e) submit to psychological/psychiatric treatment at Pretrial Services' discretion.
  - (f) submit to drug/alcohol testing no more than \_\_\_\_\_ times per month and/or outpatient substance abuse therapy and counseling, as directed by the Pretrial Services Office. Testing may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. Pretrial Services need not notify the Court of test results attributed to residual elimination.
  - (g) take two drug tests. If both tests are negative (or show only residual elimination of marijuana), no further testing is authorized.
  - (h) not use alcohol at all.
  - (i) not have a blood alcohol content (BAC) of .08% or more.
  - (j) participate in and complete a program of inpatient substance abuse therapy and counseling, as directed by the Pretrial Services Office.
  - (k) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including: \_\_\_\_\_
  - (l) participate in the Location Monitoring Program and comply with its requirements as directed under the following component and technology:
    - (i) **Curfew.** You are restricted to your residence  every day from \_\_\_\_\_ to \_\_\_\_\_, or  as directed by the pretrial services office or supervising officer.
    - (ii) **Home Detention.** You are restricted to your residence at all times except for Pretrial Services-approved absences for: employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; Court-ordered obligations; or other activities.
    - (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down at your residence except for Court-approved absences for medical necessities, court appearances, or other activities.
 Technology:  PTS Discretion  GPS  Radio Frequency  Smart Link  Voice Recognition
    - You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services officer.
    - Defense counsel must notify Pretrial Services upon submission of bond paperwork; defendant to be released from custody to Pretrial Services the following business day by 10:00 a.m. and Pretrial Services to transport if needed.
  - (m) return to custody each \_\_\_\_\_ at \_\_\_\_\_ AM/PM after being released at \_\_\_\_\_ AM/PM for employment, schooling, or the following purposes: \_\_\_\_\_
  - (n) remain in the custody of \_\_\_\_\_, who will supervise the defendant and notify the Court immediately if the defendant violates any conditions of release.
  - (o) not drive a vehicle without a valid U.S. driver license and current insurance.
  - (p) Pretrial Services may disclose confidential information to third parties for the purposes of securing community resources.
  - (q) **Adam Walsh Act:** See attached Addendum for additional conditions.
  - (r) Preauthorization to place Defendant in a contract facility.
  - (s) Other conditions: \_\_\_\_\_
- (13)  All conditions previously set will remain the same.

Dated: 3/31/2021

  
Honorable Bernard G. Skomal  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

vs

Michael Todd Lucas

CASE NUMBER 21CR0851-AJB

**ABSTRACT OF ORDER**

Booking No. N/A

TO THE UNITED STATES MARSHAL AND / OR WARDEN, METROPOLITAN CORRECTIONAL CENTER:

Be advised that under date of 3/31/2021

the Court entered the following order:

                   Defendant be released from custody.

                   Defendant placed on supervised / unsupervised probation / supervised release.

                   Defendant continued on supervised / unsupervised probation / supervised release.

Defendant released on

**O/R**

Bond posted.

Defendant appeared in Court. FINGERPRINT & RELEASE.

                   Defendant remanded and ( \_\_\_\_\_ bond ) ( \_\_\_\_\_ bond on appeal ) exonerated.

                   Defendant sentenced to TIME SERVED, supervised release for \_\_\_\_\_ years.

                   Bench Warrant Recalled.

                   Defendant forfeited collateral.

                   Case dismissed.

                   Case dismissed, charges pending in case no.

                   Defendant to be release to Pretrial Services for electronic monitoring.

                   Other.

BERNARD G. SKOMAL

UNITED STATES MAGISTRATE JUDGE

3/31/21

Electronically Sent to USMS

OR

JOHN MORRILL, Clerk of Court

by M. Niebla (619) 321-0989

**D. Juarez - OK**

**Read: 21CR851; Abstract****CAS Releases**

Wed 3/31/2021 3:41 PM

**To:** Margot Niebla

1 attachments (58 KB)

Read: 21CR851; Abstract;

**CAUTION - EXTERNAL:**

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16  
17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 Case No. 21 CR 851-AJB

21 Plaintiff,

22 PLEA AGREEMENT

23 v.

24 MICHAEL TODD LUCAS,

25 Defendant.

26 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,  
27 through its counsel, ROBERT S. BREWER, JR., United States Attorney, and Stephen K.  
Moulton and Charles A. O'Reilly, Special Assistant United States Attorneys, and Defendant  
Michael Todd Lucas, with the advice and consent of Charles G. La Bella, counsel for  
Defendant, as follows:

28 I

29 THE PLEA

30 Defendant agrees to waive Indictment and plead guilty to an Information charging  
31 Defendant with:

32 *Willfully failing to collect, account for, and pay over federal employment taxes,  
33 within the Southern District of California, in violation of 26 U.S.C. § 7202.*

34 In addition, the attached restitution addendum shall govern restitution in this case.

35 Plea Agreement

36 Def. Initials 

37 - CR -

## II

NATURE OF THE OFFENSEA. ELEMENTS EXPLAINED

The offense to which Defendant is pleading guilty has the following elements:

1. Defendant was a person who had a duty to collect, truthfully account for, and pay over federal income and social security taxes that Defendant was required to withhold from the wages of employees for the calendar quarter ending March 31, 2015;

2. Defendant failed to collect or truthfully account for and pay over federal income and social security taxes that Defendant was required to withhold from the wages of employees for the calendar quarter ending March 31, 2015; and

3. Defendant acted willfully.

B. ELEMENTS UNDERSTOOD AND ADMITTED – FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each element of the crime and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

1. For the years 2008 through 2017, Defendant controlled TradeMotion, Inc. (formerly known as Trademotion, LLC), as well as other business entities including i3 Brands, Inc., Intelligentz Automotive Corporation and Intelligentz Corporation. Defendant exercised control over every aspect of each entity's business affairs, including approving payments by the entities and controlling the entities' business bank accounts.

2. Defendant caused the business entities to make thousands of dollars of expenditures for his personal benefit while, at the same time, causing the business entities to fail to pay over to the Internal Revenue Service payroll taxes withheld from employees.

3. The business entities identified above were required to make deposits of the payroll taxes to the Internal Revenue Service on a periodic basis. In addition, the entities were required to file, following the end of each calendar quarter, an Employer's Quarterly Income Tax Return, Form 941, setting forth the total amount of wages and other

1 compensation subject to withholding, the total amount of income tax withheld, the total  
 2 amount of social security and Medicare taxes due, and the total tax deposits.

3       4. Defendant was a "responsible person," that is, he had the responsibility  
 4 to collect, truthfully account for, and pay over the entities' payroll taxes.

5       5. The business entities identified above withheld payroll tax payments  
 6 from employees' paychecks, but failed to make full payment to the Internal Revenue Service  
 7 for the payroll taxes due.

ENITITY	QUARTER	AMOUNT DUE	AMOUNT PAID
Trademotion, LLC	4Q 2011	124,392.9	36,271.31
Trademotion, LLC	1Q 2012	139,391.20	20,054.190
Trademotion, LLC	2Q 2012	163,761.99	0.00
Trademotion, LLC	3Q 2012	159,625.93	104,592.27
Trademotion, LLC	4Q 2012	156,774.61	30,599.74
Trademotion, LLC	3Q 2013	165,516.52	70,359.17
Trademotion, LLC	4Q 2013	194,720.42	133,455.87
Trademotion, LLC	2Q 2014	214,606.35	178,335.04
TradeMotion, Inc.	3Q 2014	212,422.30	152,258.85
TradeMotion, Inc.	4Q 2014	181,247.76	0.00
TradeMotion, Inc.	1Q 2015	196,030.09	0.00
TradeMotion, Inc.	2Q 2015	198,420.33	0.00
TradeMotion, Inc.	3Q 2015	63,114.43	34,090.35

22       6. Altogether, during the years 2008 through 2017, Defendant caused the  
 23 identified entities to fail to pay over a substantial amount in payroll taxes which, including  
 24 penalties and interest, is approximately \$4,944,475.56. For Sentencing Guidelines  
 25 purposes, Defendant caused a tax loss totaling \$1,410,008.04.

26       7. Defendant last filed an individual income tax return for tax year 2017.

III

## **PENALTIES**

The crime to which Defendant is pleading guilty carries the following penalties:

- A. a maximum five (5) years in prison;
  - B. a maximum fine of \$250,000 or twice the gain or loss from the offense;
  - C. a mandatory special assessment of \$100; and
  - D. a term of supervised release of up to three (3) years. Failure to comply with condition of supervised release may result in revocation of supervised release, requiring defendant to serve in prison, upon revocation, all or part of the statutory maximum term of supervised release.

In addition, Defendant may be subject to an order of restitution to the Internal Revenue Service requiring Defendant to repay at least \$4,944,475.66.

IV

**DEFENDANT'S WAIVER OF TRIAL RIGHTS AND  
UNDERSTANDING OF CONSEQUENCES**

This guilty plea waives Defendant's right at trial to:

- A. Continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
  - B. A speedy and public trial by jury;
  - C. The assistance of counsel at all stages;
  - D. Confront and cross-examine adverse witnesses;
  - E. Testify and present evidence and to have witnesses testify on behalf of Defendant; and,
  - F. Not testify or have any adverse inferences drawn from the failure to testify.

11

11

11

## V

1           **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED**  
 2           **WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

3           Any information establishing the factual innocence of Defendant known to the  
 4 undersigned prosecutor in this case has been turned over to Defendant. The Government  
 5 will continue to provide such information establishing the factual innocence of Defendant.

6           If this case proceeded to trial, the Government would be required to provide  
 7 impeachment information for its witnesses. In addition, if Defendant raised an affirmative  
 8 defense, the Government would be required to provide information in its possession that  
 9 supports such a defense. By pleading guilty Defendant will not be provided this information,  
 10 if any, and Defendant waives any right to this information. Defendant will not attempt to  
 11 withdraw the guilty plea or to file a collateral attack based on the existence of this  
 12 information.

## VI

13           **DEFENDANT'S REPRESENTATION THAT GUILTY**  
 14           **PLEA IS KNOWING AND VOLUNTARY**

15           Defendant represents that:

16           A.     Defendant has had a full opportunity to discuss all the facts and circumstances  
 17 of this case with defense counsel and has a clear understanding of the charges and the  
 18 consequences of this plea. By pleading guilty, Defendant may be giving up, and rendered  
 19 ineligible to receive, valuable government benefits and civic rights, such as the right to vote,  
 20 the right to possess a firearm, the right to hold office, and the right to serve on a jury. The  
 21 conviction in this case may subject Defendant to various collateral consequences, including  
 22 but not limited to revocation of probation, parole, or supervised release in another case;  
 23 debarment from government contracting; and suspension or revocation of a professional  
 24 license, none of which can serve as grounds to withdraw Defendant's guilty plea.

25           B.     No one has made any promises or offered any rewards in return for this guilty  
 26 plea, other than those contained in this agreement or otherwise disclosed to the Court.

C. No one has threatened Defendant or Defendant's family to induce this guilty plea.

D. Defendant is pleading guilty because Defendant is guilty and for no other reason.

VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF CALIFORNIA**

8 This plea agreement is limited to the United States Attorney's Office for the Southern  
9 District of California, and cannot bind any other authorities in any type of matter, although  
10 the Government will bring this plea agreement to the attention of other authorities if  
11 requested by Defendant.

VIII

## **APPLICABILITY OF SENTENCING GUIDELINES**

14 The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). In  
15 imposing the sentence, the sentencing judge must consult the United States Sentencing  
16 Guidelines (Guidelines) and take them into account. Defendant has discussed the  
17 Guidelines with defense counsel and understands that the Guidelines are only advisory, not  
18 mandatory. The Court may impose a sentence more severe or less severe than otherwise  
19 applicable under the Guidelines, up to the maximum in the statute of conviction. The  
20 sentence cannot be determined until a presentence report is prepared by the U.S. Probation  
21 Office and defense counsel and the Government have an opportunity to review and challenge  
22 the presentence report. Nothing in this plea agreement limits the Government's duty to  
23 provide complete and accurate facts to the district court and the U.S. Probation Office.

IX

**SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

26 This plea agreement is made pursuant to Federal Rule of Criminal  
27 Procedure 11(c)(1)(B). The sentence is within the sole discretion of the sentencing judge who

1 may impose the maximum sentence provided by statute. It is uncertain at this time what  
2 Defendant's sentence will be. The Government has not made and will not make any  
3 representation about what sentence Defendant will receive. Any estimate of the probable  
4 sentence by defense counsel is not a promise and is not binding on the Court. Any  
5 recommendation by the Government at sentencing also is not binding on the Court. If the  
6 sentencing judge does not follow any of the parties' sentencing recommendations, Defendant  
7 will not withdraw the plea.

x

## PARTIES' SENTENCING RECOMMENDATIONS

#### A. SENTENCING GUIDELINE CALCULATIONS

12        Although the Guidelines are only advisory and just one factor the Court will consider  
13 under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the  
14 following Base Offense Level, Specific Offense Characteristics, Adjustments, and  
15 Departures:

- |  |     |
|--|-----|
| 1. Base Offense Level [§§ 2T1.6(a) and 2T4.1(H)] | 20  |
| 2. Acceptance of Responsibility [§ 3E1.1]        | - 3 |

**B. ACCEPTANCE OF RESPONSIBILITY**

20 Despite paragraph A above, the Government need not recommend an adjustment for  
21 Acceptance of Responsibility if Defendant engages in conduct inconsistent with acceptance  
22 of responsibility including, but not limited to, the following:

1. Fails to truthfully admit a complete factual basis as stated in the plea at the time the plea is entered, or falsely denies, or makes a statement inconsistent with, the factual basis set forth in this agreement;
  2. Falsey denies prior criminal conduct or convictions;
  3. Is untruthful with the Government, the Court or probation officer; or

1           4. Breaches this plea agreement in any way.

2           C. **FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS**  
3           **INCLUDING THOSE UNDER 18 U.S.C. § 3553**

4           Defendant may request or recommend additional downward adjustments,  
5           departures, or variances from the Sentencing Guidelines under 18 U.S.C. § 3553. The  
6           Government may oppose any downward adjustments, departures, or variances not set forth  
7           in Section X, paragraph A above.

8           D. **NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY**

9           The parties have **no** agreement as to Defendant's Criminal History Category.

10           E. **"FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION**

11           The facts in the "factual basis" paragraph of this agreement are true and may be  
12           considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances  
13           of the offense under 18 U.S.C. § 3553(a)(1).

14           F. **PARTIES' RECOMMENDATIONS REGARDING CUSTODY**  
15           **AND SENTENCING DATE**

16           The Government will recommend that Defendant be sentenced low end of the  
17           advisory guideline range recommended by the Government at sentencing.

18           The parties agree to jointly request that sentencing occur approximately six months  
19           following the entry of the plea to allow Defendant time within which to accumulate funds to  
20           pay all or a significant portion of the anticipated restitution amount before sentencing. It is  
21           understood that sentencing is within the sole discretion of the Court including the timing of  
22           the imposition of sentence and therefore although the parties agree to jointly request a  
23           continuation of sentencing for six months, it is within the sole discretion of the court when  
24           sentencing will occur.

25           G. **SPECIAL ASSESSMENT / FINE / RESTITUTION**

26           1. **Special Assessment**

27           The parties will jointly recommend that Defendant pay a special assessment in the  
28           amount of \$100.00 per felony count of conviction to be paid forthwith at time of sentencing.

1 Special assessments shall be paid through the office of the Clerk of the District Court by  
2 bank or cashier's check or money order made payable to the "Clerk, United States District  
3 Court."

2. Fine

5 The parties will not recommend imposition of a fine due to Defendant's limited  
6 financial prospects and anticipated restitution obligation, and because the cost of collection,  
7 even taking into account the Inmate Responsibility Program, likely would exceed the  
8 amounts that could reasonably be expected to be collected.

### 3. Restitution

10 The parties agree that the Court may impose restitution as contemplated in the  
11 attached restitution addendum.

**H. SUPERVISED RELEASE**

13 If the Court imposes a term of supervised release, Defendant will not seek to reduce  
14 or terminate early the term of supervised release until Defendant has served at least 2/3 of  
15 the term of supervised release and has fully paid and satisfied any special assessments, fine,  
16 criminal forfeiture judgment, and restitution judgment.

XI

**DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

19       Defendant waives (gives up) all rights to appeal and to collaterally attack every  
20 aspect of the conviction and sentence, including any restitution order up to \$5,000,000.00.  
21 This waiver includes, but is not limited to, any argument that the statute of conviction or  
22 Defendant's prosecution is unconstitutional and any argument that the facts of this case do  
23 not constitute the crime charged. The only exceptions are 1) Defendant may appeal a  
24 custodial sentence above the high end of the guideline range recommended by the  
25 Government at sentencing (if USSG § 5G1.1(b) applies, the high end of the range will be the  
26 statutorily required mandatory minimum sentence), and 2) Defendant may collaterally  
27 attack the conviction or sentence on the basis that Defendant received ineffective assistance

1 of counsel. If Defendant appeals, the Government may support on appeal the sentence or  
 2 restitution order actually imposed.

3 **XII**

4 **BREACH OF THE PLEA AGREEMENT**

5 Defendant and Defendant's attorney know the terms of this agreement and shall  
 6 raise, before the sentencing hearing is complete, any claim that the Government has not  
 7 complied with this agreement. Otherwise, such claims shall be deemed waived (that is,  
 8 deliberately not raised despite awareness that the claim could be raised), cannot later be  
 9 made to any court, and if later made to a court, shall constitute a breach of this agreement.

10 Defendant breaches this agreement if Defendant violates or fails to perform any  
 11 obligation under this agreement. The following are non-exhaustive examples of acts  
 12 constituting a breach:

13       1. Failing to plead guilty pursuant to this agreement;  
 14       2. Failing to fully accept responsibility as established in Section X,  
 15 paragraph B, above;

16       3. Failing to appear in court;  
 17       4. Attempting to withdraw the plea;  
 18       5. Failing to abide by any court order related to this case;  
 19       6. Appealing (which occurs if a notice of appeal is filed) or collaterally  
 20 attacking the conviction or sentence in violation of Section XI of this plea agreement; or  
 21       7. Engaging in additional criminal conduct from the time of arrest until  
 22 the time of sentencing.

23       If Defendant breaches this plea agreement, Defendant will not be able to enforce any  
 24 provisions, and the Government will be relieved of all its obligations under this plea  
 25 agreement. For example, the Government may proceed to sentencing but recommend a  
 26 different sentence than what it agreed to recommend above. Or the Government may pursue  
 27 any charges including those that were dismissed, promised to be dismissed, or not filed as

1 a result of this agreement (Defendant agrees that any statute of limitations relating to such  
 2 charges is tolled indefinitely as of the date all parties have signed this agreement; Defendant  
 3 also waives any double jeopardy defense to such charges). In addition, the Government may  
 4 move to set aside Defendant's guilty plea. Defendant may not withdraw the guilty plea  
 5 based on the Government's pursuit of remedies for Defendant's breach.

6 Additionally, if Defendant breaches this plea agreement: (i) any statements made by  
 7 Defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a  
 8 District Judge); (ii) the factual basis statement in Section II.B in this agreement; and  
 9 (iii) any evidence derived from such statements, are admissible against Defendant in any  
 10 prosecution of, or any action against, Defendant. This includes the prosecution of the charge  
 11 that is the subject of this plea agreement or any charges that the prosecution agreed to  
 12 dismiss or not file as part of this agreement, but later pursues because of a breach by the  
 13 Defendant. Additionally, Defendant knowingly, voluntarily, and intelligently waives any  
 14 argument that the statements and any evidence derived from the statements should be  
 15 suppressed, cannot be used by the Government, or are inadmissible under the United States  
 16 Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the  
 17 Federal Rules of Criminal Procedure, and any other federal rule.

18 **XIII**

19 **CONTENTS AND MODIFICATION OF AGREEMENT**

20 This plea agreement embodies the entire agreement between the parties and  
 21 supersedes any other agreement, written or oral. No modification of this plea agreement  
 22 shall be effective unless in writing signed by all parties.

23 **XIV**

24 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

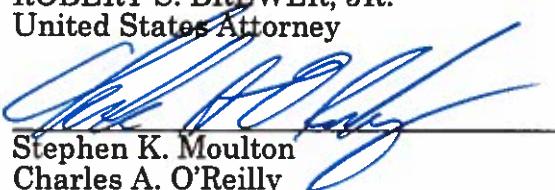
25 By signing this agreement, Defendant certifies that Defendant has read it (or that it  
 26 has been read to Defendant in Defendant's native language). Defendant has discussed the  
 27 terms of this agreement with defense counsel and fully understands its meaning and effect.

1 XV  
2

3 **DEFENDANT SATISFIED WITH COUNSEL**

4 Defendant has consulted with counsel and is satisfied with counsel's representation.  
5 This is Defendant's independent opinion, and Defendant's counsel did not advise Defendant  
6 about what to say in this regard.

7 ROBERT S. BREWER, JR.  
8 United States Attorney

9   
10 Stephen K. Moulton  
11 Charles A. O'Reilly  
12 Special Assistant U.S. Attorneys

13 4 January 2021

14 DATED

15 12-15-2020

16 DATED

17   
18 Charles G. La Bella  
19 Defense Counsel

20 **IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR  
21 UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"  
22 SECTION ABOVE ARE TRUE.**

23 12-17-2020

24 DATED

25   
26 Michael Todd Lucas  
27 Defendant

28 Approved By:

29   
30 Charles A. O'Reilly  
31 Special Assistant U.S. Attorney

32 Plea Agreement

21-cr-851-AJB

RESTITUTION ADDENDUM

This Restitution Addendum is incorporated into and is part of Defendant's plea agreement. In addition to the penalties in this plea agreement, Defendant's conviction may require that Defendant pay restitution.

1. Based on the crime to which defendant is pleading guilty, the Court may order pursuant to 18 U.S.C. § 3663 that defendant make restitution to the victim of the offense of conviction.

2. Defendant agrees to pay restitution to the Internal Revenue Service in an amount up to \$4,904,722.33, pursuant to 18 U.S.C. § 3663(a)(3) and agrees that the total amount of restitution reflected in this agreement results from Defendant's conduct.

3. The total amount of restitution consists of the following:

Tax Period and Item	Tax Reported	Tax Paid	Amount to be Credited to Tax	Interest	Penalties
Intelligentz Corporation					
Form 941 4Q 2008	53,441.05	39,133.60	14,307.45	17,417.45	31,859.42
Form 941 1Q 2009	41,336.38	29,968.55	11,367.83	13,147.27	25,835.25
Form 941 2Q 2009	33,238.76	6,307.49	26,931.27	10,947.99	20,774.22
Form 941 3Q 2009	24,764.32	20,364.55	4,399.77	5,626.11	14,765.13
Form 941 4Q 2009	23,110.95	15,598.28	7,512.67	5,436.80	13,898.39
Form 940 4Q 2009	869.70	0	869.70	251.56	438.10
Form 941 1Q 2010	18,108.87	12,312.51	5,796.36	4,016.40	10,833.45
Form 941 2Q 2010	17,075.13	11,693.31	5,381.82	3,577.44	10,262.68
Form 941 3Q 2010	8,340.95	5,744.85	2,596.10	1,544.43	4,550.46
Form 941 4Q 2010	10,502.80	7,214.09	3,288.71	1,558.90	4,203.30
Form 940 2010	504.00		504.00	101.31	173.68
Intelligentz Automotive Corporation					
Form 941 3Q 2008	126,942.22	93,331.77	33,610.45	18,823.82	25,473.96

Restitution Addendum

Def. Initials   
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1	Form 941 4Q 2008	69,066.17	50,951.97	18,114.20	20,778.65	39,713.05
2	Form 940 2008	1,189.77	669.62	520.15	230.91	578.72
3	Form 941 1Q 2009	92,173.81	19,195.85	72,977.96	29,048.94	52,999.94
4	Form 941 2Q 2009	102,852.62	0	102,852.62	25,713.16	78,127.96
5	Form 941 3Q 2009	98,950.65	0	98,950.65	29,168.64	56,896.63
6	Form 941 4Q 2009	88,910.84	0	88,910.84	24,883.46	51,185.73
7	Form 940 2009	1,914.41		1,914.41	535.66	1,100.78
8	Form 941 1Q 2010	105,234.43	0	105,234.43	40,729.02	60,509.80
9	Form 941 2Q 2010	109,631.07	0	109,631.07	40,707.68	63,037.86
10	Form 941 3Q 2010	108,485.35	0	108,485.35	38,594.37	62,379.07
11	Form 941 4Q 2010	111,971.33	0	111,971.33	38,254.52	64,383.51
12	Form 941 1Q 2011	26,107.95	26,107.95	0	1,213.26	8,744.66
13	Trademotion, LLC					
14	Form 941 4Q 2011	124,392.90	36,271.31	88,121.59	12,545.92	53,049.27
15	Form 941 1Q 2012	139,391.20	0	139,391.20	10,101.95	68,354.65
16	Form 941 2Q 2012	163,761.99	0	163,761.99	11,988.64	44,273.49
17	Form 941 3Q 2012	159,625.93	0	159,625.93	8,351.00	73,480.92
18	Form 941 4Q 2012	156,774.61	0	156,774.61	8,478.17	30,571.05
19	Form 941 1Q 2013	166,877.07	166,877.07	0	6,115.72	41,719.27
20	Form 941 2Q 2013	159,914.53	159,914.53	0	1,635.98	41,577.77
21	Form 941 3Q 2013	165,516.52	140,509.76	25,006.76	2,325.24	58,758.31
22	Form 941 4Q 2013	194,720.42	33,455.87	161,264.55	811.51	29,368.16
23	Form 941 1Q 2014	213,138.33	213,138.33	0	0.00	21,366.82
24	Form 941 2Q 2014	214,606.35	71,734.45	142,871.90	541.17	25,692.64
25	Form 940 2014	22,236.51	0	22,236.51	202.41	3,144.19
26						
27						
28						

Trademotion, Inc.					
Form 941 3Q 2014	212,422.30	152,258.85	60,163.45	19,491.21	32,178.55
Form 941 4Q 2014	182,090.44	0	182,090.44	34,593.32	72,886.18
Form 941 1Q 2015	196,030.09	0	196,030.09	34,651.38	82,383.62
Form 941 2Q 2015	198,420.33	0	198,420.33	31,055.72	79,418.14
Form 941 3Q 2015	60,310.33	32,148.52	28,161.81	268.92	5,469.04
Form 940 2015	5,997.00		5,997.00	71.85	1,069.49
I3 Brands, Inc.					
Form 941 2Q 2017	273,555.04	77,469.46	196,085.58	7,828.58	45,425.02
Form 940 2017	4,371.97		4,371.97	362.03	1,289.73

12 Defendant agrees to pay Title 26 interest on the restitution amount; interest runs from the  
13 last date prescribed for payment of the relevant tax through the date of sentencing. The  
14 government will provide an updated interest figure at sentencing.

15 4. Defendant agrees that restitution is due and payable immediately after the  
16 judgment is entered and is subject to immediate enforcement, in full, by the United States.  
17 If the Court imposes a schedule of payments, Defendant agrees that the schedule of  
18 payments is a schedule of the minimum payment due, and that the payment schedule does  
19 not prohibit or limit the methods by which the United States may immediately enforce the  
20 judgment in full. The IRS will use the amount of restitution ordered as the basis for a civil  
21 assessment under 26 U.S.C. § 6201(a)(4). Defendant does not have the right to challenge  
22 the amount of this restitution-based assessment. *See* 26 U.S.C. § 6201(a)(4)(C). Neither the  
23 existence of a restitution payment schedule nor Defendant's timely payment of restitution  
24 according to that schedule will preclude the IRS from immediately collecting the full amount  
25 of the restitution-based assessment.

26 5. Defendant is entitled to receive credit for restitution paid pursuant to this plea  
27 agreement against those assessed civil tax liabilities due and owing for the same periods for  
28

Restitution Addendum

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1 which restitution was ordered. Defendant understands and agrees that the plea agreement  
2 does not resolve the Defendant's civil tax liabilities, that the IRS may seek additional taxes,  
3 interest and penalties from Defendant relating to the conduct covered by this plea  
4 agreement and for conduct relating to another time period, and that satisfaction of the  
5 restitution debt does not settle, satisfy, or compromise Defendant's obligation to pay any  
6 remaining civil tax liability. Defendant authorizes release of information to the IRS for  
7 purposes of making the civil tax and restitution-based assessments.

8 6. Defendant understands that he is not entitled to credit with the IRS for any  
9 payment until the payment is received by the IRS.

10 7. If full payment cannot be made immediately, Defendant agrees to make a  
11 complete and accurate financial disclosure to the IRS on forms prescribed by the IRS  
12 (including, but not limited to, IRS Form 433-A and Form 433-B, as appropriate), and to  
13 disclose to the IRS any and all additional financial information and financial statements  
14 provided to the probation office. Defendant also agrees to provide the above-described  
15 information to the probation office.

16 8. If Defendant makes a payment of the restitution agreed to in paragraph 3 prior  
17 to sentencing, the payment will be applied as a credit against the restitution ordered  
18 pursuant to paragraph 3.

19 9. The parties estimate the amount of restitution will be no more than  
20 \$4,904,722.33. Defendant understands that this is only an estimate based on currently  
21 available information. The Government will recommend restitution of no more than  
22 \$4,904,722.33. The Court may impose restitution of any amount based on information  
23 available at sentencing. Defendant agrees that a restitution award in a higher amount is  
24 not grounds to withdraw Defendant's guilty plea. The Defendant also agrees that nothing  
25 in this plea agreement or restitution addendum limits the Government's duty to provide  
26 complete and accurate facts to the district court and the U.S. Probation Office to calculate  
27 restitution.

28

Restitution Addendum

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1        10. Any payment schedule imposed by the Court establishes only a minimum  
2 obligation. Any payment schedule does not foreclose the United States from exercising all  
3 legal actions, remedies, and processes available to collect the restitution judgment,  
4 including, but not limited to, remedies pursuant to 18 U.S.C. §§ 3613 and 3664(m)(1)(A).  
5 Defendant will make a good faith effort to pay the full restitution.

6        11. Restitution shall be paid through the Office of the Clerk of the District Court  
7 by bank or cashier's check or money order referencing the criminal case number and made  
8 payable to the "Clerk, United States District Court."

9       12. With each payment to the Clerk of the Court made pursuant to the District  
10 Court's restitution order, Defendant will provide the following information:

- 11 A. Defendant's name and Social Security number;

12 B. Taxpayer's name and Taxpayer Identification number;

13 C. The District Court and the docket number assigned to this case;

14 D. Tax period(s) for which restitution has been ordered; and

15 E. A statement that the payment is being submitted pursuant to the

16 District Court's restitution order.

17        13. Defendant agrees to include a request that the Clerk of the Court send the  
18 information, along with Defendant's payments, to the IRS address below:

19 IRS - RACS

20 Attn: Mail Stop 6261, Restitution

21 333 W. Pershing Ave.

22 Kansas City, MO 64108

23 Defendant also agrees to independently send notice to that address of any payments made  
24 to the Clerk of Court pursuant to this agreement.

14. The United States may run credit and other financial reports on Defendant using public and non-public databases and share such information with the Court and the U.S. Probation Office. Defendant also authorizes the Internal Revenue Service to transmit

1 to the United States Attorney's Office copies of his/her tax returns until restitution is paid  
2 in full and will promptly execute any documents necessary to carry out this authorization.

3       15. Not later than 30 days after execution of the plea agreement, Defendant shall  
4 complete and provide to the United States, under penalty of perjury, a financial disclosure  
5 form listing all Defendant's current and projected assets and financial interests valued at  
6 more than \$1,000. These include all assets and financial interests in which Defendant has  
7 an interest (or had an interest prior to May 16, 2019, direct or indirect, whether held in  
8 Defendant's name or in the name of another, in any property, real or personal, including  
9 marital and community property. Defendant shall also identify all assets valued at more  
10 than \$5,000 which have been transferred to any third party since May 16, 2019, including  
11 the location of the assets, the identity of the third party or parties, and the amount of  
12 consideration received by the Defendant for the transferred assets. Defendant will provide  
13 complete, updated financial information promptly upon request.

14       16. From the date this plea agreement is executed until restitution is paid in full,  
15 Defendant shall immediately notify the Forfeiture and Financial Litigation Section of the  
16 United States Attorney's Office of any interest in property worth more than \$1,000 that  
17 Defendant obtains, directly or indirectly, including any interest obtained under any other  
18 name or entity, including a trust, partnership or corporation. The parties will jointly  
19 recommend that this requirement also be imposed as a condition of supervised release.

20       17. Defendant shall notify the Forfeiture and Financial Litigation Section of the  
21 United States Attorney's Office at least 30 days before Defendant transfers any interest in  
22 property owned directly or indirectly by Defendant worth over \$1,000, including any interest  
23 held or owned under any other name or entity, including trusts, partnerships, or  
24 corporations. The parties will jointly recommend that this requirement also be imposed as  
25 a condition of supervised release.

26

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Restitution Addendum

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1 RANDY S. GROSSMAN  
2 United States Attorney  
3 Charles A. O'Reilly  
4 Special Assistant United States Attorney  
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8 Telephone: (202) 616-0115  
9 Email: charles.a.o'reilly@usdoj.gov  
10 Attorneys for United States of America

11  
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17  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 MICHAEL TODD LUCAS,

22 Defendant.

Case No. 3:21-CR-00851-AJB

23  
24  
25  
26  
27  
**UNITED STATES' SENTENCING**  
**MEMORANDUM**

28 Date: February 7, 2022

Time: 9:00 a.m.

Courtroom: 4A

29  
30  
31  
32  
33  
**THE HON. ANTHONY J. BATTALIA**

34 The UNITED STATES OF AMERICA, by and through its counsel, Randy  
35 Grossman, U.S. Attorney, and Charles A. O'Reilly, Special Assistant U.S. Attorney,  
36 hereby files this Sentencing Memorandum regarding Defendant Michael Todd Lucas,  
37 which is supported by the Plea Agreement and Presentence Investigation Report ("PSR"),  
38 ECF Nos. 8 and 17.

39  
40  
41  
42  
**I. INTRODUCTION**

43 During the years 2008 through 2017, Defendant Michael Todd Lucas controlled  
44 TradeMotion, Inc. (formerly known as Trademotion, LLC) and other business entities  
45 including i3 Brands, Inc., Intelligentz Automotive Corporation and Intelligentz  
46 Corporation, exercising control over every aspect of each entity's business affairs.

1 Plea Agreement, ECF No. 8 p. 2. Defendant had the authority to manage the company's  
 2 finances and the responsibility to ensure the company paid over trust-fund taxes to the  
 3 Internal Revenue Service ("IRS") on behalf of the company's employees. *Id.* pp. 2-3.  
 4 Instead of properly fulfilling those duties, Defendant willfully failed to make full payment  
 5 of the trust-fund taxes and directed company funds elsewhere, including making  
 6 expenditures for his personal benefit. *Id.*

7 The criminal case focuses on the periods from the fourth quarter of 2011 through the  
 8 third quarter of 2015, with the first quarter of 2015 being the count of conviction.  
 9 Defendant's criminal conduct resulted in a tax loss totaling \$1,410,008.04. *Id.* p. 3.  
 10 Defendant agreed to pay \$4.9 million in restitution with respect to employment taxes owed  
 11 by his businesses for the period beginning the fourth quarter of 2008 through the second  
 12 quarter of 2017. *Id.* and Restitution Addendum ECF No. 11-1.

## 13                   **II. EMPLOYMENT TAXES**

14                   Employers are required to withhold, truthfully account for, and pay over to the IRS  
 15 a variety of taxes from employee wages, including federal income taxes and Federal  
 16 Insurance Contribution Act ("FICA") taxes, which include Medicare and Social Security  
 17 taxes. These taxes are known as "trust-fund taxes," because an employer holds them *in trust* on behalf of the employer's employees.

19                   Employers use Form 941, Employer's Quarterly Federal Tax Return, to report to the  
 20 IRS the wages, tips, and other compensation paid to employees, the total amount of federal  
 21 income tax withheld, the total amount of FICA taxes withheld, and the total tax deposits.

22                   The payment of wages trigger's an employer's duty to withhold, account for, and  
 23 pay over trust-fund taxes. A person shares that responsibility with the employer if he or she  
 24 has the authority required to exercise "significant control" over the employer's finances,  
 25 regardless of whether the individual exercises such control. *United States v. Jones*, 33 F.3d  
 26 1137, 1139 (9th Cir. 1994).

1 Separate from the trust-fund taxes, which are imposed on individual employees but  
2 withheld and paid over by the employer, the employer is also required to pay taxes for  
3 Social Security, Medicare, and unemployment based on a percentage of each employee's  
4 income. The employer's share of these taxes is not withheld from employee wages but is a  
5 separate tax obligation of the employer. These represent the *employer's* share of payroll  
6 taxes as distinct from the *employee's* share.

### 7 III. STATEMENT OF FACTS

8 In accordance with his Plea Agreement, Defendant waived indictment and pled  
9 guilty to a one count Information to charging him with willfully failing to account for and  
10 pay over trust-fund taxes for the first quarter of 2015, in violation of Title 26, United States  
11 Code Section 7202. ECF Nos. 1 and 8.

12 The Plea Agreement and Presentence Report provide the facts relevant to this matter.  
13 ECF Nos. 8 pp. 2-3 and 17 pp. 3-5.

### 14 IV. SENTENCING RECOMMENDATION

#### 15 A. Advisory Guideline Calculations

16 The United States agrees with the probation officer's calculations. Defendant's  
17 criminal conduct caused a tax loss, including relevant conduct, totaling \$1,410,008.04  
18 which corresponds to offense level 20. USSG §§ 2T1.1(a)(1); 2T4.1(H) (2018) (tax loss of  
19 more than \$550,000 and less than \$1.5 million).

20 No special offense characteristics apply. The Defendant has accepted responsibility  
21 under USSG § 3E1.1(a), reducing the offense level by two levels. Assuming the Defendant  
22 continues to accept responsibility the United States will move for an additional reduction  
23 of one level under § 3E1.1(b) for timely notification, resulting in a final offense level of 17.

24 The probation officer determined that the Defendant had no criminal history points  
25 and is in Criminal History Category I. The Defendant's guideline range is from 24 to 30  
26 months and is in Zone D of the Sentencing Table. Under the Guidelines, Defendant is not  
27 eligible for a sentence of probation. USSG § 5C1.1(f).

## B. Sentencing Factors

The United States believes that a guideline range sentence is appropriate and recommends a sentence of imprisonment of 24 months, a period of supervised release of three years, a special assessment of \$100, and restitution of \$4,904,722.33, based on the application of the § 3553(a) factors. Those factors include:

- (1) the nature and circumstances of the offense;
  - (2) the history and characteristics of the defendant;
  - (3) the need for the sentence imposed to reflect the seriousness of the offense, afford specific and general deterrence, and promote respect for the law;
  - (4) the kinds of sentences available;
  - (5) the kinds of sentences and the sentencing range established by the Sentencing Guidelines;
  - (6) pertinent policy statements issued by the Sentencing Commission;
  - (7) the need to avoid unwarranted sentencing disparities among defendants who have similar criminal records and have been found guilty of similar conduct; and
  - (8) the need to provide restitution to victims.

*See 18 U.S.C. § 3553(a).*

## 1. Nature and Circumstances of the Offense

Although the Defendant’s employees in this case are not considered victims under the Crime Victims’ Rights Act, (*see United States v. May*, 568 F.3d 597, 603 (6th Cir. 2009) (employees not victims of 26 U.S.C. § 7202 offense)), the Defendant’s criminal conduct still had a significant and detrimental impact on his employees. When a company fails to make tax payments to the IRS on behalf of an employee, the IRS does not penalize the employees. Even if the employer has not paid over the trust-fund taxes, the IRS still

1 allows an employee to file a tax return, report the withholding amount on the Form W-2,  
2 and claim a refund, if due.

3 When a company fails to make Social Security payments, however, the Social  
4 Security Administration does not give credit to the employees for payments that should  
5 have been received. In this case, the Defendant's employees received pay statements and  
6 end-of-year Form W-2 statements that led them to believe that their tax withholdings,  
7 Medicare payments, and Social Security payments had been paid when, in fact, they had  
8 not been paid. The Defendant's employees suffered many years with no Social Security  
9 contributions, which may have an adverse impact on their later ability to claim Social  
10 Security benefits. Correcting their Social Security accounts may be a difficult and time-  
11 consuming process for the employees.

12 By issuing Forms W-2 to his employees, Defendant gave them the false belief that  
13 the money withheld from their wages had been paid over. It is difficult enough to correct a  
14 Social Security account with a known discrepancy, it is even more difficult when one isn't  
15 even aware of the problem. *See Investment News*, How to correct Social Security earnings  
16 records, July 18, 2016 (<https://www.investmentnews.com/how-to-correct-social-security-earnings-records-2-68316>). By ignoring IRS notices Defendant kept his businesses  
17 operating and ensured that his personal needs and expenses were met. Using funds held in  
18 trust for employees for other purposes is a form of embezzlement. Defendant abused his  
19 role as the responsible person directing funds as he saw fit rather than as required.  
20 Furthermore, had Defendant been upfront with his employees, they might have  
21 reconsidered their employment—or at a minimum complained to state or federal  
22 authorities, bringing more attention to his conduct.

24 By failing to pay over the trust fund taxes and other taxes owed, also Defendant put  
25 his business in an unfair position relative to other businesses. By failing to pay over  
26 millions of dollars in payroll in taxes, Defendant significantly reduced business expenses.  
27 Conduct like this makes it more difficult for compliant businesses to compete in the

1 marketplace and stay in business. Without adequate enforcement and deterrence,  
 2 noncompliant businesses survive, and compliant businesses leave the marketplace.

3 **2. History and Characteristics of the Defendant**

4 Over the years, Defendant owned and operated various businesses, including some  
 5 that developed and marketed inventory management software. Defendant formed  
 6 Intelligentz Corporation in approximately 2006 and secured multiple well-known clients  
 7 including the Department of Defense, NASA, Time Warner Cable and Whole Foods.  
 8 In 2008, following an economic downturn, Defendant turned his efforts to TradeMotion  
 9 which marketed inventory management software used by automotive dealerships. At its  
 10 peak, 5,000 dealerships used the software. Defendant sold the company in 2017, using  
 11 some of the proceeds to satisfy some of the company's liabilities including IRS obligations.

12 The PSR indicates Defendant presently has no physical health concerns and takes  
 13 no prescription medications.

14 **3. Need for Sentence Imposed / Kinds of Sentences Available /**  
 15 **Guidelines / Avoiding Unwarranted Sentencing Disparities**

16 Congress and state legislatures have provided American companies with great  
 17 flexibility in managing their affairs, allowing them to choose models and arrangements that  
 18 best promote their businesses. This autonomy, however, requires placing a certain degree  
 19 of trust in the owners and officers of businesses because that autonomy and flexibility also  
 20 provides an opportunity to arrange business affairs in ways that conceal business activity,  
 21 make it difficult for authorities to assess tax, and create barriers for the Government to even  
 22 discover the existence of income and assets. This is especially true with trust-fund taxes,  
 23 which are held and managed in trust by private parties on behalf of employees.

24 The legislative history of Title 18, United States Code Section 3553 reveals that  
 25 Congress "viewed deterrence as 'particularly important in the area of white collar crime.'" "  
 26 *United States v. Livesay*, 525 F.3d 1081, 1093–94 (11th Cir. 2008) (quoting *United States*  
 27 *v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006)). In particular, in enacting Section 3553

1 “Congress was especially concerned that prior to the Sentencing Guidelines, ‘[m]ajor white  
 2 collar criminals often [were] sentenced to small fines and little or no imprisonment.’”  
 3 *Martin*, 455 F.3d at 1240 (quoting S. Rep. No. 98-225, at 76 (1983), reprinted in 1984  
 4 U.S.C.C.A.N. 3182, 3259).

5 In *Martin*, the Eleventh Circuit noted that “[b]ecause economic and fraud-based  
 6 crimes are ‘more rational, cool, and calculated than sudden crimes of passion or  
 7 opportunity,’ these crimes are ‘prime candidate[s] for general deterrence.’” 455 F.3d at  
 8 1240 (quoting Stephanos Bibas, White-Collar Plea Bargaining and Sentencing After  
 9 Booker, 47 Wm. & Mary L. Rev. 721, 724 (2005)). The Eleventh Circuit went on to reason  
 10 that “[d]efendants in white collar crimes often calculate the financial gain and risk of loss,  
 11 and white collar crime therefore can be affected and reduced with serious punishment.” *Id.*  
 12 Moreover, the Court should consider the importance of general deterrence for tax crimes.  
 13 The Sentencing Guidelines note,

14 The criminal tax laws are designed to protect the public interest in preserving  
 15 the integrity of the nation’s tax system. Criminal tax prosecutions serve to  
 16 punish the violator and promote respect for the tax laws. Because of the  
 17 limited number of criminal tax prosecutions relative to the estimated  
 incidence of such violations, deterring others from violating the tax laws is a  
 primary consideration.

18 USSG Ch. 2, Pt. T, intro. comment (at pg. 319) (2015) (emphasis added); *see also United*  
 19 *States v. Burgos*, 276 F.3d 1284, 1289 n.6 (11th Cir. 2001) (“For a judge sentencing a  
 20 defendant convicted of tax evasion, the chief concern may be general deterrence . . .”);  
 21 *United States v. Hoskins*, 654 F.3d 1086, 1103 (10th Cir. 2011) (Briscoe, C.J., concurring  
 22 in part and dissenting in part) (emphasizing importance of deterrence in sentencing for tax  
 23 offenses). The Fourth Circuit has explicitly endorsed the importance of sentences that  
 24 include imprisonment as a means of general deterrence in tax cases:

25 Given the nature and number of tax evasion offenses as compared to the  
 26 relatively infrequent prosecution of those offenses, we believe that the  
 27 Commission’s focus on incarceration as a means of third-party deterrence is  
 28 wise. The vast majority of such crimes go unpunished, if not undetected. Without a real possibility of imprisonment, there would be little incentive for

1 a wavering would-be evader to choose the straight-and-narrow over the  
 2 wayward path.

3 *United States v. Engle*, 592 F.3d 495, 502 (4th Cir. 2010). As U.S. Supreme Court Justice  
 4 Breyer, an original member of the Sentencing Commission, explained in a lecture (given  
 when he was on the First Circuit),

5 The Commission found in its data significant discrepancies between pre-  
 6 Guideline punishment of certain white-collar crimes, such as fraud, and other  
 7 similar common law crimes, such as theft. The Commission's statistics  
 8 indicated that where white-collar fraud was involved, courts granted probation  
 9 to offenders more frequently than in situations involving analogous common  
 10 law crimes; furthermore, prison terms were less sever [sic] for white-collar  
 11 criminals who did not receive probation. To mitigate the inequities of these  
 12 discrepancies, the Commission decided to require short but certain terms of  
 13 confinement for many white-collar offenders, including tax, insider trading,  
 14 and antitrust offenders, who previously would have likely received only  
 15 probation.

12 Stephen Breyer, The Federal Sentencing Guidelines and the Key Compromises Upon  
 13 Which They Rest, 17 Hofstra L. Rev. 1, 20–21 (1988).

14 Several courts, including this one, recently imposed sentences of imprisonment for  
 15 employment tax violations:

<u>Case Name</u>	<u>Case Citation</u>	<u>Sentence</u>	<u>Tax Loss</u>
<i>U.S. v Sreckovic</i>	21-cr-018 (S.D. Ca. Apr. 7, 2021)	30 months	> \$1.6 million
<i>U.S. v. Gogineni</i>	20-cr-081 (E.D. Va. Feb. 10, 2021)	11 months	> \$900,000
<i>U.S. v. Choi</i>	20-cr-006 (D. D.C. Oct. 8, 2020)	21 months	> \$11 million
<i>U.S. v. Adams</i>	19-cr-546 (M.D. N.C. Oct. 6, 2020)	42 months	> 2.3 million
<i>U.S. v. Wood</i>	19-cr-546 (M.D. N.C. Jun. 25, 2020)	18 months	> 2.3 million
<i>U.S. v. Betancourt</i>	19-cr-20684 (S.D. Fl. Mar. 11, 2020)	24 months	> 9.0 million
<i>U.S. v. Dale</i>	19-cr-006 (D. N.J. Feb. 6, 2020)	12 months	> \$500,000
<i>U.S. v. Gazdick</i>	19-cr-200 (E.D. Va. Nov. 8, 2019)	18 months	> 5.5 million
<i>U.S. v. Cooper</i>	19-cr-008 (S.D. Ohio Oct. 30, 2019)	14 months	> \$587,000
<i>U.S. v. Grayson</i>	19-cr-067 (N.D. Ok. Oct. 29, 2019)	24 months	> \$1.0 million
<i>U.S. v. Ferguson</i>	19-cr-161 (D. N.C. Aug. 2019)	14 months	> \$374,000
<i>U.S. v. Semma</i>	18-cr-20516 (E.D. Mich. Jan. 5, 2021)	24 months	> \$1.7 million

1 **C. Sentencing Recommendation**

2 A guideline range sentence is appropriate; the United States recommends a sentence  
3 of imprisonment at the low end of the Guideline range - 24 months, a period of supervised  
4 release of three years and restitution of \$4,904,722.33. The United States recommends the  
5 Court take note of the following facts in determining the sentence:

- 6 1. The “very substantial amount of tax loss” of \$1.4 million, PSR ¶¶ 21 and 80;  
7 2. Defendant’s multiple-year pattern of criminal conduct spanning 2011 – 2015,  
8 *id.* ¶ 6;  
9 3. Failure to file Forms W-2 and W-3 with the Social Security Administration;  
10 and  
11 4. Defendant’s conduct wasted Internal Revenue Service employees’ time and  
12 resources.

13 These facts mitigate against any downward departure or variance and support the  
14 imposition of a guideline-range sentence. The United States therefore recommends the  
15 Court impose a 24-month sentence of imprisonment and three-years supervised release.

16 **D. Restitution**

17 A district court has the authority to enter an order of restitution in Title 26 cases  
18 under the Victim & Witness Protection Act, 18 U.S.C. § 3663(a)(3), “to the extent agreed  
19 to by the parties in a plea agreement.” This authority allows the Court to impose restitution  
20 as a separate and independent part of a sentence rather than as a special condition of  
21 probation or supervised release. *United States v. Anderson*, 545 F.3d 1072, 1077–78 (D.C.  
22 Cir. 2008); *United States v. Firth*, 461 F.3d 914, 920 (7th Cir. 2006).

23 In accordance with the Plea Agreement, the Defendant has agreed to pay restitution  
24 in the amount of \$4,904,722.33, an amount that will be updated as of the date of sentencing  
25 to include any payments Defendant has made as well as additional penalties and interest.  
26 The United States will provide the Court with a proposed restitution order with an updated  
27 restitution amount with restitution calculated as of the date of sentencing.

## **V. RECOMMENDATION**

Defendant's criminal conduct calls for a guideline-range sentence which the United States believes is appropriate; the United States recommends a sentence of 24 months imprisonment, a three-year term of supervised release and restitution in the amount of \$4,904,722.33 or as determined by the Court.

Dated: January 24, 2022

Respectfully submitted,

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6 Attorneys for Defendant,  
Michael Lucas

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 MICHAEL LUCAS,  
14 Defendant.

Case No. 21-cr-851-AJB

**SENTENCING MEMORANDUM**

16 Michael Lucas (“Michael” or “Mr. Lucas”) stands before the Court having  
17 pleaded guilty and accepted complete responsibility for his actions and their  
18 consequences in connection with payroll tax liability. Michael is deeply remorseful  
19 and is prepared to accept whatever punishment the Court deems appropriate. We  
20 respectfully request in fashioning an appropriate sentence the Court consider that: (i)  
21 Michael had been negotiating with the IRS in good faith both prior to and during the  
22 time since the IRS opened this criminal investigation; (ii) throughout this case,  
23 including the five years before a criminal investigation was opened, Michael  
24 attempted, and, in fact, did, pay a significant portion of his outstanding tax  
25 obligations, despite some funds being mis-applied to interest and penalties rather than  
26 to outstanding tax liability, (iii) Michael continues to attempt to make the government  
27 whole, including the millions of dollars he owes in penalties and interest, (iv) his

1 failure to pay taxes was motivated entirely by his desire to keep his company  
 2 operational, and (v) he has already been thoroughly punished by the collapse of his  
 3 business interests, as a consequence of this investigation.

4 **Introduction**

5 **I. Consideration of the 18 U.S.C. Section 3553 Factors**

6 **A. The History and Characteristics of Michael**

- 7 1. Michael aspired to become a successful businessman  
 8 despite lack of formal education and a difficult childhood,  
 9 including the trauma of his father's murder.

10 Michael was born in Salem, Oregon to John and Katherine Lucas. PSR ¶ 33.  
 11 He graduated from high school, in 1985, and never attended college. PSR ¶ 45.  
 12 Despite growing up with a financially well-off family, his upbringing and young  
 13 adult years were not as idyllic as it might appear to an outside observer. His  
 14 childhood and early adulthood were marred by family dysfunction and trauma. His  
 15 father was an alcoholic and a philanderer. PSR ¶ 79. When Michael was a teenager,  
 16 his parents split, after his mother learned of his father's multiple infidelities,  
 17 including one with a teenager who Michael – himself – was pursuing at the time. PSR  
 18 ¶ 36. At fifteen years old, Michael also discovered that he had an older brother that  
 19 his parents had put up for adoption when they were young. PSR ¶ 35. To say that  
 20 these revelations strained his relationship with his parents, especially his relationship  
 21 with his father, is beyond an understatement. Tragically, Michael and his father never  
 22 fully reconciled before his father's murder, in 1987, allegedly by a business partner.  
 23 The business partner apparently took out an insurance policy on the senior Michael  
 24 and then hired another individual to kill him. PSR ¶ 31, 37. *See David Virgil Waldner*  
 25 *v. Donald Dow*, 876 P.2d 785 (Or. App. 1994) (noting that “[i]n November 1987  
 26 [Michael's father's] body was found at a remote location in Linn County...he had  
 27 been shot in the head”), *see also* “Police seeks leads in shooting death,” Statesman  
 28 Journal available at (<https://www.newspapers.com/clip/94111966/>) and attached as

1 Exhibit A. While the police were investigating his father's murder, at the request of  
2 law enforcement, Michael wore a wire and obtained evidence against several of the  
3 suspects. PSR ¶ 37, 79. He was the one who ultimately discovered his father's body.  
4 PSR ¶ 31, 37. The trauma of that experience and of the ensuing search and  
5 prosecution for the alleged killers was extraordinarily difficult. Yet, because of this  
6 experience, Michael has always admired and worked with law enforcement whenever  
7 he was asked. He has and continues to have an enormous respect for law  
8 enforcement, and this is why his current difficulties weigh heavily upon him.

9 Following his father's murder, Michael left Oregon and moved to Florida. PSR  
10 ¶ 37. However, he could not fully escape the tragedy of his youth. For years  
11 following his father's murder, individuals continued to target his family, including  
12 attempts to extort money. *Id.* Despite his troubled upbringing and these tragic events,  
13 Michael persevered to have an incredibly successful career in the automotive  
14 industry. PSR ¶ 47. After moving to Florida, and despite a lack of advanced formal  
15 education, he was promoted to General Manager at a Toyota dealership in the early  
16 1990s and then he became a vice president for an advertising firm that specialized in  
17 automotive dealerships. *Id.* He found a niche in the automotive industry. In 1999,  
18 he began assisting a non-profit, where he invented the "Inventory Control System  
19 and Method," which later became the foundation for his software entrepreneurial  
20 expansion and many successful ventures, including TradeMotion, LLC. PSR ¶ 47.

21 Michael's respect for law enforcement and justice is also reflected in his  
22 assistance to the Federal Trade Commission (FTC) in their efforts to prosecute two  
23 major Dealer Management System (DMS) providers for alleged antitrust activities.  
24 Jon Leibowitz (former Chair of the FTC), suggested that, despite having "little to  
25 gain personally and much to lose," Michael volunteered industry insider information  
26 that was not known to the public and was relevant to the ongoing investigation. This  
27 FTC investigation was launched in the Spring of 2017. The alleged antitrust behavior  
28 is still under investigation.

1        During the antitrust litigation, Michael uncovered (4) data breach incidents  
 2 that occurred between October 2017 and May 2018, which affected more than 3  
 3 million consumers. He noticed a discretion between the reported scope of the breach  
 4 and reality and reported this information to all the relevant Attorney Generals and the  
 5 FTC Bureau of Consumer Protection. The Reynolds and Reynolds Company  
 6 experienced these data breach incidents, which were not previously known to the  
 7 FTC.

8        Finally, in 1995, Michael received a letter of recognition from the U.S.  
 9 Attorney's Office in the Western District of Washington for serving as a witness in  
 10 the United States v. Mew, et al., (94CR5246FDB), a case that resulted in the  
 11 conviction of multiple defendants in a case involving wire fraud, money laundering,  
 12 and conspiracy.<sup>1</sup> Any one of these cases could independently serve as a basis for a  
 13 substantial variance or departure, as they demonstrate Michael's consistent  
 14 willingness and ability to assist law enforcement and the government.

15        2. Michael is also a husband, a father, brother and a friend.

16        Michael is a beloved family member, friend and member of the community.  
 17 As the Court can see below, others have relied on him to guide them through difficult  
 18 periods in their lives, from drug addiction and family trauma to financial difficulties.  
 19 Michael's altruism is not just shared with his close family members and friends. He  
 20 has also been lauded for his efforts to make the world a better place, from his  
 21 dedication to protecting the environment to helping underprivileged children receive  
 22 an education. Below are excerpts of the many letters written to or about Michael and

---

23  
 24  
 25        <sup>1</sup> The letter, signed by an Assistant United States Attorney Robert H. Westinghouse, who was a  
 26 federal prosecutor for more than 25 years, thanks Mr. Lucas for his "assistance and cooperation"  
 27 and notes that "[i]n being a witness, you have fulfilled a vital and necessary function within our  
 28 judicial system. You personally have been invaluable to us in the trial process." This letter is  
 attached as Exhibit B.

1 which speak to his compassion, resilience and energy to help others. These letters  
2 are attached as Exhibit C.

- 3 • November 9, 2021, Letter to Hon. Anthony J. Battaglia from Julie Lucas,  
4 Michael's former wife of 17 years and the mother of his three children,  
5 describing Michael as great husband and involved father:

6       ○ “Michael was a great husband when I was married to him and continues  
7       to be one of my closest friends to this day. Michael is a great dad to his  
8       three children and is very involved in the kids' lives. He is known for  
9       helping others, such as putting his nephew through rehab, taking in family  
10      members and countless gestures for family, friends and former  
11      employees. . . Michael is someone who is innovative, creative,  
12      hardworking and has always wanted to achieve the American dream. He  
13      has employed countless people of all backgrounds for years. . .”

- 14 • October 27, 2021, Letter to Hon. Anthony J. Battaglia from Tiera Cronin, the  
15      daughter of one of Michael's former business partners, describing how Michael  
16      made her mother's dying wish come true:

17       ○ “He made a promise to my mother that she would be able to see her  
18       grandchildren before she passed away, and he delivered on his promise. . .  
19       I lost my children. . . it caused me to go down a path I shouldn't have but  
20       he understood. . . He promised that he would help me get my children back  
21       in my life once they were 18 years of age. He delivered on his promise,  
22       and I can't thank him enough to this day.”

- 23 • October 31, 2021 Letter to Hon. Anthony J. Battaglia from Troy Budgen, a  
24      friend of Michael, his former wife and three children, describing Michael as a  
25      brotherly friend, an employer with true leadership skills, and a striving, resilient  
26      businessman:

27       ○ “I've often joked with him that 'he's the only person on the planet I know  
28       that could have kept our company going throughout all the countless

1 challenges faced.’ His resiliency, dedication and belief in his vision and  
2 entrepreneurial spirit is truly inspirational. It was this same resiliency that  
3 was put to the test by a law passed several years after our patents were  
4 issued without any regard to being grandfathered in.”

- 5 • November 1, 2021, Letter to Hon. Anthony J. Battaglia from Shawn Lucas,  
6 Michael’s younger brother, describing their childhood, their father’s murder, and  
7 their family’s relationship with law enforcement, due to their father’s murder.  
8 The letter also describes Michael as someone who would essentially provide the  
9 shirt off his back to help others:
  - 10 ○ “I know he would help me or anyone that needed it. He is someone that  
11 will go above and beyond to get people back on the right track, as our dad  
12 did. . . My grandpa, my dad, all of us were raised to help others, forgive  
13 those who’ve sinned against us and ask for forgiveness when we make  
14 mistakes. One example is Michael spending the last five years and  
15 thousands of dollars trying to help our nephew who is struggling with  
16 drug addiction.”
- 17 • November 3, 2021 Letter to Hon. Anthony J. Battaglia from Jon Leibowitz, a  
18 former Chair of the Federal Trade Commission and current antitrust lawyer  
19 practicing in Washington, D.C., regarding Michael’s assistance with a major  
20 antitrust investigation currently being conducted by the Federal Trade  
21 Commission:
  - 22 ○ “Mr. Lucas came forward with little to gain personally and much to lose,  
23 especially if the alleged conspirators became aware of his courageous  
24 activity. Mr. Lucas and I became friends as a result of our work  
25 together.”
- 26 • November 7, 2021, Letter to Hon. Anthony J. Battaglia from Venkata Ramana  
27 Pinnam, a former employee of Michael, describing him as a responsible and  
28 understanding employer:

- “There were times when we had no money to pay employees, Michael was always thinking about how to pay the employees and he risked everything he got to take care of the employees and I've witnessed this during all my tenures with Michael. Michael has been very sensitive to employee needs and their personal situations.”
  - November 11, 2021, Letter to Hon. Anthony J. Battaglia from Janell Riley, a former employee of Michael, describing him as someone who always put his business ahead of his personal needs:
    - “Michael is and always has been an intelligent, driven and, most importantly, a caring individual and businessman. He continually regarded the business ahead of any personal gain and frequently, and possibly to his detriment, made sure that employee needs, including payroll, were always placed in the forefront of his obligations. In fact, he often paid the salaries of his employees before taking his own salary.”
  - November 16, 2021, Letter to Hon. Anthony J. Battaglia from John Lucas, Michael’s nephew, describing Michael as the man who gave him life and hope:
    - “Michael went to great lengths to understand why I wasn’t able to stay sober. . . Despite criticism from others, he stood by my side and continued loving me as if I was his own. . . He not only goes above and beyond for me but for anyone every chance he gets, seemingly without thought or hesitation. . . He’s an amazing mentor to many and is certainly my best friend.”
  - November 16, 2021, Letter to Hon. Anthony J. Battaglia from Kimberly Church, stating that her son would likely not be alive, if it were not for Michael:
    - “Michael always looks to brighten other people’s day. Most recently, Michael has helped my son John Lucas recovers from a long battle with drug addiction. The drug addiction almost took his life multiple times and if it wasn’t for Michael, I am sure my son would have passed away.”

- 1     • February 2, 2022, Letter to Hon. Anthony J. Battaglia from Katie Desikan,  
2       defining Michael as someone to whom she could always turn to:  
3           ○ “... just over 15 years ago when I had lived in Southern California, I had  
4            someone enter my life who intended to harm me, and during that time, I  
5            decided to relocate to Texas. Michael helped me out every step of the  
6            way, with logistics and relocation, getting settled, and more importantly,  
7            helping me feel more secure about my new life in Texas.”
- 8     • August 26, 2014, Letter to Michael from the Andrew Sharpless, CEO, Valarie  
9        Van Cleave, Board Member, Co-Chair, and Eve Ruffalo, Co-Chair, of Oceana  
10      Protecting the World’s Oceans regarding Michael’s support in improving the  
11      marine ecosystems in the Pacific Ocean, from Alaska to Patagonia:  
12           ○ “From California to our other locations throughout the world, your  
13            support is making it possible for Oceana to achieve specific, measureable  
14            policy changes to restore ocean life and the ocean’s ability to feed a  
15            growing population. . . We hold ourselves accountable to you as a  
16            supporter for getting results.”
- 17     • October 17, 2014, Letter to Michael from William R. Brody, M.D., Ph.D.,  
18        President of Salk Institute for Biological Studies, regarding Michael’s  
19        sponsorship of the Symphony at Salk, in order to fund scientific initiatives  
20        furthering human health:  
21           ○ “Your generous sponsorship helped generate much-needed dollars to fund  
22            scientific initiatives that are having a profound impact on human health  
23            and disease, and also provided crucial support for our award-winning  
24            education outreach program.”
- 25     • January 19, 2021, Email to Michael from Shara Fisler, Founder and Executive  
26        Director of Ocean Discovery Institute regarding his service as a board member  
27        for the institute, which helps underprivileged children learn about science:

1           ○ “I have truly enjoyed these 8 years with you! You are innovative,  
2           thoughtful, and generous. But for me, most importantly, you have always  
3           shared your kindness and support. I will miss having you in the formal  
4           role that you have held. . .”

5           3.     Michael is not wealthy.

6           The facts of this case, including Michael’s own words, risk giving the false  
7           impression that he is a wealthy man. The reality is that Michael is not and has never  
8           been a wealthy man. At one point in his life, due to modest successes in business,  
9           Michael convinced himself that he would someday be a millionaire. Indeed, at times,  
10           his net worth – on paper – exceeded millions of dollars. His checking account,  
11           however, belies the claim that he is wealthy and confirms his harsh financial reality.  
12           At the time of his interview with probation, his checking account, which is his only  
13           liquid asset, contained a grand total of \$135.29. PSR ¶ 59. That has not materially  
14           changed. Additionally, a significant portion of his legal fees, as a result of this matter,  
15           remain unpaid. The appearance of wealth is an illusion.

16           The government’s claims that Michael spent millions of dollars on personal  
17           expenses when he could have paid his taxes, noting that he had \$2.6 million in credit  
18           card bills, \$326,000 in car expenses, and provided \$944,000 to family members, is  
19           wildly overstated. PSR ¶ 8. While these figures are technically accurate, the amounts  
20           were not exclusively or even predominately for Michael’s personal use. For example,  
21           he routinely used credit cards to pay for legitimate, deductible business expenses, as  
22           well as the salaries of several executives, including his brother. His brother worked  
23           for the company for a decade, beginning in February 2007, and accepted automobiles  
24           and housing as his compensation, due to poor credit history. These “expenses” were  
25           at all times accounted for and attributed accurately within the company’s books.

26           Further, as noted above, nearly a decade passed from when the IRS discovered  
27           payroll taxes were not being fully paid, until the IRS first notified Michael and  
28           ultimately started a criminal investigation. PSR ¶ 14. While Michael may have

1 appeared to live a luxurious lifestyle at the beginning of this ordeal, it was an illusion,  
2 and he consistently struggled to keep his company operational and his employees in  
3 their jobs. Thus, it would be a mistake to look at a sliver of time, when Michael  
4 appeared to be flush with funds, and assume this was true throughout. It is simply  
5 not the case here.

6 **B. The Nature and Circumstances of the Offense**

7 **1. This is not a case involving tax fraud.**

8 This is not a case where the defendant misrepresented, or hid, or tried to  
9 confuse, the amount he owed in income tax to the government. On the contrary, this  
10 case involves the failure to pay over payroll taxes that were due and owing to the  
11 IRS. While he takes full responsibility for this failure, Michael never lied or hid the  
12 payroll tax debt. To the contrary, Michael told the IRS exactly how much he owed  
13 and, in fact, made partial payments in nine of the thirteen quarters that form the basis  
14 for this very criminal case. In total, he paid at least \$760,016.79 during the *criminal*  
15 quarters charged in this case.

16 **2. The Industry Collapses around Michael**

17 In 2006, Michael started Intelligentz Corporation, which was formed to  
18 leverage a patent he created. PSR ¶ 48. The company focused on inventory  
19 management and e-commerce software, known as TradeMotion, which Intelligentz  
20 acquired in 2007. *Id.* The software was incredibly successful. The company secured  
21 multiple well-known customers, such as the Department of Defense, NASA, Time  
22 Warner Cable, and Whole Foods. *Id.* At its peak, 5,000 dealerships used the software  
23 to manage their auto parts e-commerce business, while Michael served as the  
24 Director and CEO. *Id.*

25 Then, in 2008, the automotive industry collapsed, as did many major sectors  
26 in the business and financial sectors. While banks and large car manufacturers were  
27 bailed out, companies like those of Michael, were left to fend for themselves. Over  
28 the next decade, Michael's company and the fate of hundreds of employees stumbled

1 forward, under the constant threat of bankruptcy. Michael would stabilize the  
2 company and then “something else would happen.” PSR ¶ 9. In Michael’s mind, he  
3 incorrectly thought of the IRS as just another creditor, and he fell further and further  
4 behind on the company’s payroll tax obligations because he was “constantly fixing  
5 other problems.” PSR ¶ 12.

6 Michael failed to pay over payroll taxes because he was trying to keep his  
7 company alive, a company that employed at least 40 individuals. PSR ¶ 7. The  
8 technology he invented extended beyond his own company and created jobs for  
9 thousands of people in the automotive industry. During this turbulent period,  
10 Michael and other executives routinely deferred compensation and attempted to turn  
11 a profit, so all the debts could be satisfied.

12 Michael admitted he fell behind on employment taxes because he was  
13 “constantly fixing other problems.” There were disruptions occurring, while trying  
14 to get capital and produce balance sheets, and, when he was able to get capital, he  
15 would only get enough for operating expenses. Chrysler was one of the major  
16 accounts that Michael underwrote the development, during their own bankruptcy,  
17 and trusted the executive that the costs associated with that development would be  
18 eventually made up. PSR ¶ 12. After all, Michael’s company supported  
19 approximately 1,200 of the Chrysler dealerships for just \$7,500.00 per month, until  
20 they could no longer extend the services at a loss. In May 2014, there was the first  
21 of two costly data breaches. PSR ¶ 9. The FBI referred to this data breach as a ‘Fly  
22 by Hackers’ attack that exposed sensitive customer records, by exploiting website  
23 vulnerabilities. This breach tarnished the reputation of the company and resulted in  
24 significant operational disruptions. Within 30 days of the breach, TradeMotion lost  
25 its 7-year exclusive relationship with its major supplier, AutoNation, and was forced  
26 to localize operations exclusively to North America, losing revenue and brand  
27 recognition across 130 countries. In addition, there was a second data breach in 2015,  
28 and Chrysler kept promising to pay money owed to his business, but “none of it ever

1       happened.” Michael has readily admitted that, even though the company was  
 2       growing, it was “burning money” because he had to grow in order to support the  
 3       customers. PSR ¶ 12. TradeMotion, LLC was required to make deposits of the  
 4       payroll taxes that had been withheld from its employees to the IRS on a periodic  
 5       basis. Michael admittedly failed to have TradeMotion, LLC, make its obligation  
 6       timely.

7       Not once, however, did Michael fraudulently report or fail to report the amount  
 8       he and his company actually owed the IRS. In fact, the IRS knew precisely how  
 9       much Michael failed to pay over in employment taxes because Michael told them the  
 10      amount, every quarter, every year, for seven years. PSR ¶ 6. Even during the quarters  
 11      the government uses to compute his criminal tax loss, he made payments in NINE  
 12      QUARTERS as evidenced by the table in the plea agreement recreated here:

<u>ENTITY</u>	<u>QUARTER</u>	<u>AMOUNT DUE</u>	<u>AMOUNT PAID</u>
Trademotion, LLC	4Q 2011	124,392.9	36,271.31
Trademotion, LLC	1Q 2012	139,391.20	20,054.19
Trademotion, LLC	2Q 2012	163,761.99	0
Trademotion, LLC	3Q 2012	159,625.93	104,592.27
Trademotion, LLC	4Q 2012	156,774.61	30,599.74
Trademotion, LLC	3Q 2013	165,516.52	70,359.17
Trademotion, LLC	4Q 2013	194,720.42	133,455.87
Trademotion, LLC	2Q 2014	214,606.35	178,335.04
Trademotion, Inc.	3Q 2014	212,422.30	152,258.85
Trademotion, Inc.	4Q 2014	181,247.76	0
Trademotion, Inc.	1Q 2015	196,030.09	0
Trademotion, Inc.	2Q 2015	198,420.33	0
Trademotion, Inc.	3Q 2015	63,114.43	34,090.35

1                   3.     The IRS negotiated with Michael, while inadvertently impeding  
 2                   his ability to pay the taxes by encumbering unrelated entities with  
 3                   liens.

4                   TradeMotion LLC's nonpayment of taxes was discovered in 2011, at which  
 5                   time Michael received a civil notice from the IRS. PSR ¶ 11. Admittedly, as Michael  
 6                   tried to turn around his company, he treated the IRS like a creditor. As noted in his  
 7                   Motion for Downward Departure, however, the IRS acted like a creditor. It  
 8                   negotiated with Michael, considered factual and legal arguments he proffered, and  
 9                   attempted to work out payment plans. Indeed, as reflected in the plea agreement,  
 10                  Michael made payments, and those payments were applied to the deficient quarters.  
 11                  PSR ¶ 13.

12                  During this period, the IRS also mistakenly put liens on entities that were  
 13                  unrelated to the tax due and owing. PSR ¶ 8.<sup>2</sup> While the liens were not warranted  
 14                  and were later removed by the IRS, once the error was acknowledged, the fact of the  
 15                  imposition of these liens caused financial disaster within his business model and  
 16                  made it even more difficult for Michael to pay the tax debt. *Id.* Additionally, in  
 17                  March 2016, Michael sought to satisfy his employee tax obligations through an Offer  
 18                  in Compromise, which he submitted to the IRS to satisfy the entire amount of the  
 19                  payroll taxes withheld, excluding penalties and interest. However, the IRS appeals  
 20                  office ultimately rejected the offer in June 2017. Despite his efforts to be honest with  
 21                  the IRS about his outstanding obligations and to make whatever payment he could  
 22                  afford, the IRS started a criminal investigation. According to the government, the  
 23                  IRS began this investigation because Michael "didn't make good" on all of his  
 24                  outstanding debts to the IRS. PSR ¶ 14. Notably, this investigation appears to have  
 25                  started during the same year that Michael made a \$700,000 payment to the IRS. PSR  
 26

---

27                  2 The undersigned counsel has reason to believe the IRS employee initially assigned to this case  
 28                  was either disciplined or removed from the matter due, in part, to this mistake. It was unable to  
                         confirm this fact, however.

1 ¶ 8, 14. Thus, while he never stopped cooperating with the IRS, despite being the  
 2 target of a criminal investigation, the IRS stopped cooperating with him.

3 To wit, in September 2019, IRS special agents and tax attorneys interviewed  
 4 Michael – who was represented by counsel at the time – without his tax lawyer  
 5 present. PSR ¶ 10. Michael answered every question they asked. He discussed his  
 6 professional history in detail and described his businesses, including how they were  
 7 structured. After a lengthy discussion, the Special Agent advised Michael that he  
 8 owed the IRS approximately \$4.7 million for unpaid employment taxes, interest and  
 9 penalties. *Id.* Michael informed the agents that he was not receiving any income and  
 10 was living off loans. *Id.* Even after becoming a target of criminal investigation,  
 11 Michael has continued to work with the government to repay the debt. As discussed  
 12 in greater detail, in his Motion for a Downward Departure, Michael has offered to  
 13 assign a judgement in the Southern District of New York to the government and to  
 14 set up an irrevocable trust naming the United States Treasury as a beneficiary with  
 15 respect to any sale of his intellectual property.

16 **C. The Need to Reflect the Seriousness of the Offense, Just  
 17 Punishment, Deterrence, and Protection of the Public**

18 Ultimately, during the years 2008 through 2017, TradeMotion LLC failed to  
 19 pay approximately \$4,944,475.56 in payroll taxes. PSR ¶ 13. Of that amount,  
 20 approximately \$1.4 million is considered *criminal* tax loss. *Id.* Unlike other  
 21 taxpayers, who never intend to pay their tax liability and instead attempt to  
 22 permanently deprive the Government of taxes owed to it, this is the not the case here,  
 23 as is evident by Michael’s past and current actions vis-à-vis the IRS.

24 The government recommends that this Court send Michael to prison for two  
 25 years. In support of its motion, the government cites the 30-month sentence a  
 26 defendant recently received in the Southern District of California for a tax crime. *See*  
 27 *United States v. Sreckovic*, 21cr18. The government omits, however, that the  
 28 defendant in that case had a previous conviction for tax crimes, in 2007, for “paying

1 employees under the table, filing false tax documents with the state, failing to file  
2 state tax returns and failing to pay state taxes.” See Government Sentencing  
3 Memorandum in *United States v. Sreckovic*, 21cr18 at 4. The defendant in that case  
4 also demonstrated a clear pattern of ignoring the IRS by routinely disregarding IRS  
5 notices. He also refused to work communicate with the IRS until his business was  
6 searched pursuant to a search warrant. *Id.* That is simply not the case here. To the  
7 contrary, the IRS and Michael worked together to resolve his tax obligation, until  
8 2017, when – for reasons unknown – the IRS unilaterally decided to start a criminal  
9 investigation. PSR ¶ 14. Even then, Michael continued to attempt to resolve his tax  
10 obligations. Further, in *Sreckovic*, there was no indication that the defendant there  
11 failed to pay the IRS to keep his business operational. Rather the defendant in  
12 *Sreckovic*, merely decided not to pay the IRS so he could have more money. That is  
13 a far cry from the instant case.

14 A custodial sentence is not necessary in this case to achieve the goals of the  
15 federal sentencing guidelines. A just punishment that is sufficient but not greater  
16 than necessary can be achieved with the recommended sentence. Michael has no  
17 prior convictions or contacts with law enforcement, except for those instances where  
18 he provided positive assistance to them. He has a very low risk of reoffending in the  
19 future. His risk of recidivism is especially low, given his behavior during the  
20 prolonged investigation to pay the IRS and his prompt acceptance of responsibility.  
21 Michael presents no danger to the public. Thus, individual and general deterrence  
22 will be achieved through the requested sentence within a probationary range, which  
23 falls within the guideline’s calculation.

24 Furthermore, since his entry of plea, Michael has been engaged in a business  
25 transaction for a company he co-founded with others called Blockchain Exchange  
26 Network, Inc. (“Blockchain Exchange”). PSR ¶ 53. Blockchain Exchange is a  
27 company he created to deliver personal data control back to the consumers and to  
28 prevent future data breaches. This enterprise was largely inspired by the devastating

1 impacts of the two data breaches Michael witnessed and experienced in his  
2 companies, during 2014 and 2015. Michael's vision is to create a more transparent  
3 and accountable data environment by fostering customer control over their  
4 information. The company has entered into an advisory agreement to merge the  
5 technology platform with an established existing software company. As noted in the  
6 Motion for a Downward Departure, though an anticipated acquisition has not  
7 finalized, Michael has set up an irrevocable trust, seeded it with approximately 3.6  
8 million shares of Class B common stock in Blockchain Exchange and named the  
9 United States Department of Treasury as the primary beneficiary. *See* Exhibit 4. Any  
10 period of incarceration endangers the success of that venture and impedes Michael's  
11 ability to pay off his substantial tax obligation.

12 Finally, not every defendant that appears before this Court cares that they will  
13 forever be labelled a felon. Michael, however, does. For example, throughout the  
14 acquisition described above, Michael has fully disclosed this case and his status as a  
15 felon to investors. As a direct result of his guilty plea, he will not be permitted to  
16 remain as the company's CEO or have any other executive role. That restriction, in  
17 and of itself, is a significant punishment. As someone who helped law enforcement  
18 in the past, he never envisioned himself being on this side of the ledger. This  
19 conviction has deeply impacted him. Thus, before this Court even imposes a  
20 sentence, Michael has lost control over a new company he created, owes the IRS  
21 millions of dollars in interest and penalties, and has the stigma of a felony.

22 On Michael's behalf, we respectfully submit that a sentence of six months of  
23 home confinement, three years of supervised release and restitution in the amount of  
24 \$4,904,722.33 to the IRS is an appropriate sentence that reflects the seriousness of  
25 the offense, promotes respect for the law, acts as a deterrent and does not expose the  
26 public to future criminal conduct by the defendant.

27  
28

## CONCLUSION

Michael has accepted responsibility for his lapse in judgment and conduct, and he deeply regrets that he put himself in this position. Michael's situation presents unique circumstances, in terms of the nature of the offense. Those circumstances, combined with Michael's substantial record of good deeds and character, a limited need for rehabilitation, the nature and circumstances of the misconduct and harm, and his potential to do good in the future, merit a sentence of six (6) months of home detention, supervised release, and restitution in the amount of \$4,904,722.33 to the IRS.

Dated: February 3, 2021

# BARNES & THORNBURG LLP

By: /s/ Charles G. La Bella  
Charles G. La Bella  
Andrew P. Young  
Attorneys for Defendant,  
Michael Lucas

## EXHIBIT A

## Stayton

### Police seek leads in shooting death

Police investigating the shooting death of Stayton businessman John Robert Lucas are seeking information from anyone who may have seen him on Highway 226 southwest of Lyons on Nov. 10.

Sheriff Art Martinak of Linn County said Monday that investigators want to talk with anyone who saw Lucas between 12:30 and 1 p.m. that day near the highway's intersection with Echo Hills Road or with anyone who was driving in the area that afternoon.

Lucas' body was found Nov. 12 in a field near that location, 8 miles southwest of Lyons. His car was found on an old logging road about 200 yards from the highway, and the body was about 60 yards from the car. He had been shot in the head.

Martinak said investigators think that Lucas, 46, went to the area to make contact with a client. He last was seen in the Echo Hills area shortly after noon operating a white 1982 Oldsmobile with an Oregon license of CYV-554.

Lucas left his modular home business in Stayton about 11:45 a.m. for the appointment.

Martinak asked anyone with information to call 967-3911 or 995-6048.



Clipped By:

**BT222**

Wed, Feb 2, 2022

## EXHIBIT B



UNITED STATES ATTORNEY

Western District of Washington  
800 Fifth Avenue, Suite 3600  
Seattle, Washington 98104-3190

TEL (206) 553-7970  
FAX (206) 553-0882

Please reply to:

Robert H. Westinghouse  
Carl Blackstone  
Assistant United States Attorneys  
Direct line: (206) 553-4750 553-2905  
  
Michael Lucas  
417 H Uluniu Street  
Kailu, HI 96734

March 30, 1995

Re: United States v. Mew, et al.  
No. CR94-5246FDB, USDC, W.D. Washington

Dear Michael:

The purpose of this letter is to inform you of the disposition of the above-captioned case. All of the defendants were convicted of all wire fraud, money laundering, and conspiracy offenses alleged in the Superseding Indictment. All defendants are scheduled to be sentenced on May 26, 1995, before United States District Judge Franklin D. Burgess. Your attendance is not required at sentencing.

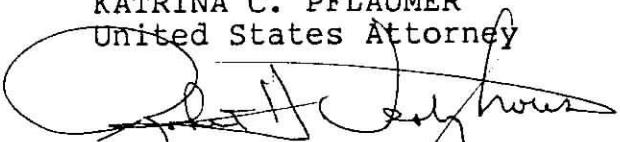
In being a witness, you have fulfilled a vital and necessary function within our judicial system. You personally have been invaluable to us in the trial process. We thank you for your assistance and cooperation.

You may be contacted in the near future by a United States Probation Officer, who will be responsible for preparing a presentence report for Judge Burgess's consideration. We request that you cooperate with the Probation Office.

If you have any questions or comments, please do not hesitate to contact either of us. Thank you again for your patience and cooperation.

Sincerely,

KATRINA C. PFLAUMER  
United States Attorney

  
ROBERT H. WESTINGHOUSE  
Assistant United States Attorney

  
CARL BLACKSTONE  
Assistant United States Attorney

## EXHIBIT C



Protecting the  
World's Oceans

909 Third Avenue, 31<sup>st</sup> Floor  
New York, NY 10022 USA

+1.212.371.5017  
oceana.org

August 26, 2014

Michael and Julie Lucas  
2196 Carmel Valley Road Third Floor  
Del Mar, CA 92014

Dear Julie and Micheal,

We thank you on behalf of Oceana's Board of Directors and staff for your support of our 2014 SeaChange event on Saturday, August 16<sup>th</sup>. We were honored to celebrate Leonardo DiCaprio's generosity in supporting Oceana's work to improve marine ecosystems in the Pacific Ocean from Alaska to South American Patagonia.

From California to our other locations throughout the world, your support is making it possible for Oceana to achieve specific, measureable policy changes to restore ocean life and the ocean's ability to feed a growing population. We are saving the ocean's most beautiful and awe-inspiring creatures, including whales, sea turtles, and sea lions. We are also limiting ocean pollution and protecting the ocean's special places.

We hold ourselves accountable to you as a supporter for getting results. Reporting on our progress at events such as SeaChange is one way that we do so. We also look forward to staying in contact with you throughout the coming year and beyond.

Again, many thanks for all you have done for Oceana and for your continued loyalty to the goal of a restored and abundant ocean. Together we are getting it done!

For the oceans,

Andrew Sharpless  
Chief Executive Officer

Valarie Van Cleave  
Board Member, Co-Chair

Eve Ruffato  
Co-Chair



**William R. Brody, M.D., Ph.D.**  
Irwin M. Jacobs Presidential Chair

October 17, 2014

Mr. Michael Lucas  
2116 Balboa Ave  
Del Mar, CA 92014-2205

Dear Michael,

Thank you so much for your key role in making this year's Symphony at Salk such a success.

Your generous sponsorship helped generate much-needed dollars to fund scientific initiatives that are having a profound impact on human health and disease, and also provided crucial support for our award-winning education outreach program.

I hope you enjoyed the evening and will make it a priority to join us again next year when we celebrate the 20<sup>th</sup> anniversary of Symphony at Salk on Saturday, August 22, 2015. Your continuing support is essential to maintaining Salk's position as one of the world's preeminent institutes for basic biological research.

I look forward to keeping in touch this year about the latest advances in Salk science. Please keep an eye out for invitations to some of our upcoming events, including the second season of the *Salk Science & Music Series*, beginning on:

- Sunday, November 2 – featuring the Eldar Trio and Professor Terry Sejnowski, Professor and Laboratory Head, Computational Neurobiology Laboratory (complete schedule attached)

We look forward to your continued partnership and are deeply grateful for your loyalty and generosity.

Best regards,

*Bill*

William R. Brody, M.D., Ph.D.  
President

WRB:gh

P.S. I'm pleased to enclose a photograph for your enjoyment.

## Akerson, Sarah

---

**From:** Michael Lucas <lucas1107@me.com>  
**Sent:** Tuesday, March 30, 2021 7:40 AM  
**To:** Akerson, Sarah  
**Subject:** [EXTERNAL]Fwd: Cabinet Member

This is an email that was from the Founder and Executive Director. Andrew was seeking card or letter from the kids at ODI and I will get some of those scanned.

Begin forwarded message:

**From:** Shara Fisler <sfisler@oceandi.org>  
**Date:** 1/19/2021  
**To:** Kurt Gering <kurtgering@cox.net>, Michael Lucas <lucas1107@me.com>  
**Subject: RE: Cabinet Member**

Hello Michael,

I have truly enjoyed these 8 years with you! You are innovative, thoughtful, and generous. But for me, most importantly, you have always shared your kindness and support. I will miss having you in the formal role that you have held, but am thrilled you will continue to support and be part of the organization.

Thank you for your care and contributions :) - Shara

Because of your continued commitment, we are able to provide programming that keeps kids safe and learning – from live virtual field trips to in-person outdoor science labs. Click Here to watch our most recent video highlighting the current programs and impacts that you have made possible!

Shara Fisler  
Founder & Executive Director  
Ocean Discovery Institute: Young lives transformed through science  
4255 Thorn Street  
San Diego, CA 92105  
Tel 619.795.8365 x101  
Cel 619.665.3861  
[www.OceanDiscoveryInstitute.org](http://www.OceanDiscoveryInstitute.org)

-----Original Message-----

From: Kurt Gering [mailto:kurtgering@cox.net]  
Sent: Monday, January 18, 2021 6:40 PM

To: Michael Lucas <lucas1107@me.com>

Cc: Shara Fisler <sfisler@oceandi.org>

Subject: Re: Cabinet Member

Michael,

Thank you for everything you have done to bring resources and focus to ODI. Look forward to the day when we get to celebrate at the gala again!

Kurt Gering

Sent from my iPhone

On Jan 18, 2021, at 4:52 PM, Michael Lucas <lucas1107@me.com> wrote:

Shara,

I wanted to thank you for the opportunity to have served on such a great organization. I realized the other day its been 8 years! I was honored to serve Ocean Discovery as a member of the Board and Cabinet Member.

Unfortunately for me it is time to relinquish my honorable role as a member, but shall remain an avid outside supporter to help the organization.

I am very proud of you Shara, you pursued your vision and made dreams for many come true.

Please keep in touch and reach out if you need anything.

Very truly yours,

Michael

Sent from my iPhone

Your Honor,

My name is Julie Lucas. I was married to Michael Lucas for 17 years and have known him for over 35 years.

I am writing to you today on behalf of Michael because of this disheartening situation that has transpired.

I wanted like 40 first say that Michael was a great husband when I was married to him and continues to be one of my closest friends to this day.

Michael is a great Dad to his 3 children and is very involved in the kids lives. He is known for helping others, such as putting his nephew through rehab, taking in family members and other countless gestures for family, friends and former employees.

Michael served on the board at Ocean Discovery which is a charitable organization that helps underprivileged children learn about science.

Michael is someone who is innovative, creative, hard working and has always wanted to achieve the American dream. He has employed countless people of all backgrounds over the years.

I sincerely hope that you will consider our 3 kids, who need their father (most import to me) when coming to your decision. I also hope that you will carefully consider all the facts that got him to this place in front of you.

I am not an attorney, but it certainly appears that all of this could have been avoided if Michael would have had ethical counsel. Please restore my faith in justice.

Thank you for your time,

A handwritten signature in black ink, appearing to read "Julie Liu".

October 27, 2021

To the Honorable Anthony Battaglia

My name is Benjamin Tippie and I have known Michael Lucas for 6 years now. We first met when he flew out to see my grandma shortly before she was expected to pass away from cancer. He was nothing but a huge help in my grandmother's life. They did business together for over 20 plus years and my grandma considered him as a son. He left a lasting impression on her life and I am grateful she had him towards the end. Michael was the one who set up the doctor's appointments, caretaker responsibilities and even her funeral arrangements. For that I am forever grateful. What he has done for me is unimaginable. He helped me purchase my first car, financially supported me through my first 2-years of college and provided me an internship with one of his companies (which I am still employed at to this day). He is not just my boss, but he is also family to me. I consider him an uncle and am grateful for the relationship I have with his family. He rekindled the relationship for my sister and I with our biological mom as it had been 15 years of not seeing her and I am forever thankful for this. Michael has three amazing sons who I am extremely close with and grateful for. I speak and spend time with Michael frequently and it reminds me of how fortunate I am to have him in my life. He is the most positive human being I know and is a light in my life, as well as many others.

Yours Sincerely,

Benjamin J Tippie



October 27, 2021

To the Honorable Anthony Battaglia

Hi, my name is Tiera Cronin. Michael has been in my life for many years. He and my mother Valerie had businesses together and all I heard over the years was how amazing Michael was to my mother. Those two talked on the phone all the time. I am forever grateful for the relationship they had especially during my years incarcerated and years of the mistakes I made. He made a promise to my mother that she would be able to see her grandchildren before she passed away and he delivered on his promise. It was around 2015 when he came to visit my mother and I was at the house, and we talked personally about how I lost my children and how much I missed them and how my mistakes haunt me every day. It caused me to go down a path that I shouldn't have but he understood where I was coming from. He also promised that he would help get my children back in my life once they were 18 years of age. He delivered on his promise, and I can't thank him enough to this day. He is an amazing man, and I am happy I just got to recently see him when I visited my son in California in July. It was great to catch up.

Sincerely,  
Tiera Cronin

October 31<sup>st</sup>, 2021

RE: Michael T. Lucas

Dear Honorable Anthony J. Battaglia,

Thank you in advance for taking the time to read my letter of advocacy on behalf of Mr. Michael T. Lucas. When asked to write this letter and serve as a character witness to Michael's integrity and loyalty I initially didn't realize the memories that would come pouring back. It's some of these memories that I wish to share with you today.

I have known Michael and his family for over twenty years having first met his ex-wife Julie and their eldest son Dylan at Calabasas Tennis & Swim Center in Calabasas, California where I formerly taught tennis lessons. Over the course of several months and numerous tennis lessons with Julie and Dylan our friendship grew and conversations were sparked about her husband Michael and his business ventures.

We arranged to meet at their house in Calabasas and Michael cooked his famous grilled Salmon. A brotherly friendship was formed that day, which still endures today. Over the course of the next few months we continued to stay in close contact and during this period I introduced Michael to some relationships of mine that connected with Michael's entrepreneurial vision.

I was in my mid- twenties around this time and open to exploring other employment options separate to my tennis coaching. It was around this timeframe that Michael asked me to come work with him on his start up company. The lessons learnt and experiences shared throughout my working relationship with Michael as well as being a shareholder in the various companies over the years has shown me the type of leader and person that Michael is. I once heard/read a quote from the late Jim Rohn, "you are the sum of the five closest people to you". Essentially this quote refers to picking people for your inner circle that are going to have a positive impact on your life. I'm proud to say that Michael has been in my Top 5 since this time.

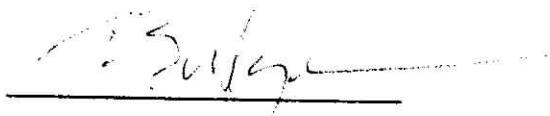
I can't imagine the stresses and pressures of life as an entrepreneur but Michael has always taken the challenges in his stride and seems to thrive in the environment. He has given his all to his employees and shareholders for the better part of two decades. I've often joked with him that "he's the only person on the planet I know that could have kept our company going throughout all the countless challenges faced". His resiliency, dedication and belief in his vision and entrepreneurial spirit is truly inspirational. It was this same resiliency that was put to the test by a law passed several years after our patents were issued without any regard to being grandfathered in. To the lay person, I thought that this passage was unfair, ridiculous and a slap in the face to the little guy.

The America Invents Act that was passed in 2011 was crippling to our company. Prior to this, third party corporate entities had placed a value on our intellectual property in the range of a \$Billion. Our patent had been recently re-issued to us under reexamination as it was being contested by a larger company. The USPTO replied that all claims were issued and enforceable. This was cause for great celebration for the small guy (small business, able to compete with larger corporations) until the PTAB rules were introduced and essentially destroyed us as we were constantly tied up in litigation for the next 7-8 years

with no discovery and having to settle for pennies on the dollar just to cover a fraction of the legal expenses. This was despite being told by the lawyers that our case was worth \$millions in royalties.

I conclude this letter with the sincere hope that I've been able to convey some of who Michael is. He's a special man, hardworking, loyal and truly an American entrepreneur success story.

Your sincerely,



Troy A Budgen

Date: November 1, 2021  
From: Shawn Lucas, Los Angeles, California  
Subject: Brother of Michael Todd Lucas, Defendant

To the Honorable Anthony J. Battaglia;

I am writing this letter to offer a more complete picture of who Michael Todd Lucas, my older brother of almost fifty four years, is as a person. Both our grandfathers fought in World War II and Grandpa Robert Lucas was Captain of the guards at Oregon State Penitentiary. Growing up in a strong Catholic family, we were taught to love and respect God, Family and Country.

Our mother Katherine, was heavily involved in electing the Chief of Police of Stayton, Oregon, and then undersheriff of Marion County, Al Allen; Marion County, Oregon Sheriff Robert Prinslow, as well as fund raisers supporting district attorneys and judges, including senior trial court Judge Val Sloper, for many years. I say this because as kids, these people were at our home and law enforcement and the justice system was always front and center. When the two of us fought, which we still do today, our Mom would always threaten, "*I'm calling Chief Allen*" or she would smack us with a Hot Wheel track, and that hurt. I'm sure Michael would rather have you hit him with a Hot Wheel track than go to Federal Prison, if only that was in the sentencing guidelines.

Michael had just celebrated his twentieth birthday when our dad was murdered in November of 1987. This had a huge impact on Michael and the entire family. Michael and Mom owned the company that sent our Dad out to a remote site that cost him his life and I believe he carries a heavy heart because of it and he shouldn't. Michael and our younger brother Casey, were the ones that found dad lying off the road. Our relationships with law enforcement in Oregon was helpful during this extremely difficult time.

Unfortunately, financial opportunist wanted to prey on our family. Michael was approached by individuals that indicated they had evidence to help in the murder investigation if we paid them a considerable amount of money. They provided non-public information about the crime scene that only the Linn County Sheriff's department had. FBI Agent Oren Grover and another agent, were tasked with using Michael to get these criminals. All of us were concerned, but the FBI and Sheriff's office reassured us that they would have ample undercover officers in place to protect Michael. These events, and many others during this time, coupled with the failed conviction of David Waldner, the man charged with paying Chris Lange to kill our Dad, were devastating. The justice system had failed us, yet we remained supportive of law enforcement and the system. Chris Lange was in prison, but the man who paid him, who had life insurance on our dad, whose lawyer argued that he barely knew Chris Lange, walks free. Then Waldner visits the killer in prison continuously. This caused a lot of pain in our family and still does to this day. Michael, like all of his brothers was entrepreneurial at a young age, but going after the killers of our dad, the subsequent years of investigations and trials of Chris Lange and Dave Waldner hurt the businesses which eventually shut down. Victims of horrific crimes suffer for a lifetime, mostly in silence, but the pain is there.

Like all siblings, Michael can be a pain in my rear sometimes, but I know he would help me or anyone that needed it. He is someone that will go above and beyond to get people back on the right track, as our dad did by offering jobs to ex-convicts at our car dealership when nobody else would hire them. Michael and I would work side by side washing cars with them as my dad wanted us to respect everyone. My grandpa, my dad, all of us were raised to help others, forgive those who've sinned against us and ask for forgiveness when we make mistakes. One example is Michael spending the last five years and thousands of dollars trying to help our nephew who is struggling with drug addiction.

Michael isn't perfect, none of us are, we all make mistakes, Michael is trying to correct this one. This felony conviction has devastated him and will be a black mark on his name for the rest of his life. I've seen his personality change from a gregarious outgoing positive guy, to one of pessimism and frustration. I've tried to cheer him up and told him to not quit plenty of times over this past year. I've told him again and again and again, to stay positive, don't be bitter or angry. I've told him that he has already taken responsibility by pleading guilty and to not look at the sentencing day as his personal doomsday, as it could very well be the day of redemption. The day that all the bad things that have happened to him and our family and all the good things Michael has done come to a head in an extraordinary act of kindness from someone you have never met before.

In closing your Honor, if I was in front of you, my ask, would be that his sentence is that of home confinement, and a Hot Wheel track to the hamstring and not Federal Prison.

Thank you for your time,

God Bless

November 3<sup>rd</sup>, 2021

Judge Anthony J. Battaglia  
United States District Court  
Southern District of California  
221 West Broadway  
San Diego CA 92101

Dear Judge Battaglia:

I am writing in reference to the upcoming sentencing of Michael Lucas.

As an antitrust lawyer practicing in Washington DC, I met Mr. Lucas several years ago when he came to me with evidence of a conspiracy between two major technology companies to raise prices and allocate markets. We took that information to the Federal Trade Commission, which is now undertaking a major antitrust investigation into that conduct.

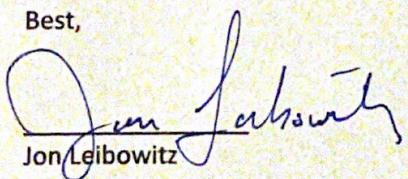
Mr. Lucas came forward with little to gain personally and much to lose, especially if the alleged conspirators became aware of his courageous activity.

Mr. Lucas and I became friends as a result of our work together.

My experience over the years has been that, because of fear of reprisals, few people are willing to volunteer information about antitrust violations. To his credit, Mr. Lucas is an exception to that rule.

I urge you to consider his efforts in this matter as you impose an appropriate sentence.

Best,



Jon Leibowitz

November 7, 2021

Dear Honorable Anthony J. Battaglia,

My name is Tyler Luck and I have been Michael's husband, partner and best friend for 8 years now. First of all, I would like to say thank you for taking the time to read this. Rather than outline stories we have shared together throughout the years, I would like to detail who Michael is to me...

Michael is the light in everyone's lives. He is everyone's problem-solver and rescuer. He is constantly dealing with the weight of the world on his shoulders - scenario's most people would fold to. Michael really is a super-hero. He is selfless, passionate and extremely driven. People look up to Michael because of his self-belief and fearlessness. People admire and respect Michael because he is a self-made, self-employed entrepreneur - someone that never gives up but continues to persevere despite all adversities. He is forever encouraging of others to follow their dreams and passions, and is always willing to help where he can. People gravitate towards Michael because they see a force within him, to not only affect and impact the world, but to empower people to do great things.

Michael moves at 100 miles an hour. He is a man on a mission with remarkable vision and may well be the busiest person I know. In fact, it is difficult to imagine him before mobile and email technology. No one could convince this man to retire, because he loves what he does. It has never been about the money for Michael, it's only ever been about making a difference. He is an innovator across multiple industries and has provided opportunities for hundreds of Americans and their families. He loves his three sons dearly, in fact, everything he does, is out of the love for his children.

In these times, it has become apparent to me as to how much we have taken Michael for granted, as well as how many people rely on Michael to be their rock. When Michael is down, it is a ripple effect, but to me it is also validation of the impact and influence Michael has on other people's lives. I have been through many ups and downs with Michael but I will continue to be by his side. I am a better person because of Michael. I know many others will say that he has had a similar impact on their lives. Michael is not perfect, he can be stubborn and yes, he makes mistakes. This is an unfortunate event we are in as a family but we will overcome this like so many challenges we have overcome together.

Yours Sincerely,

Tyler Luck



To

Date: Nov 7th, 2021

Honorable Anthony J. Battaglia

Dear Sir:

I've known Michael T. Lucas for more than 20 years. I worked for Michael, during my employment with Unisone Corp, TradeMotion and Frequentz, in the last two decades, leading the Engineering department.

I first met Michael in 2001 when I did a product presentation to him, then he offered me a CTO job in 2002 in his start-up. I admired his creativity in coming up with solutions for real life problems which might benefit individual consumers and industry verticals.

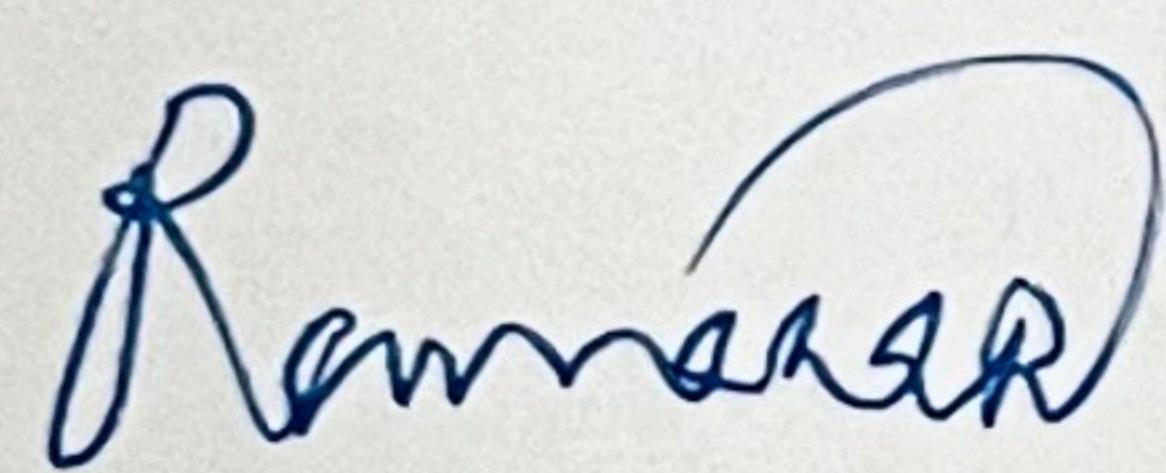
Michael pitched the idea of "MANUFACTURER PROMOTION AUTOMATION SYSTEM AND METHODS" and I did the technical design, that's part of my work, but he offered me stock incentive and named me as a co-inventor. He did not have to do that, but he was selfless and encouraged the talent. Since then, there have been numerous situations in which Michael has rewarded employees with profit sharing and offered stocks in the company.

The journey was not always smooth given the start-up nature and challenges that come with it. There were times when we had no money to pay employees, Michael was always thinking about how to pay the employees and he risked everything he got to take care of the employees and I've witnessed this during all my tenures with Michael.

Michael has been very sensitive to employee needs and their personal situations. He was readily available and resourceful to help the employees.

Feel free to approach me should you have any questions and or need more information.

Sincerely



Venkata Ramana Pinnam  
#608-332-2176  
PINNAM@gmail.com

Janell Riley  
17872 Sintonte Dr.  
San Diego, CA 92128  
619.723.3938

November 11, 2021

Hon. Anthony J. Battaglia  
United States Courthouse  
Courtroom 4A  
221 West Broadway  
San Diego, CA 92101

Re: Michael Lucas

Dear Hon. Battaglia:

Please allow me to introduce myself. My name is Janell Riley and I'm writing this in support of Michael Lucas.

I first came to know Michael as my employer in 2011 upon being hired as in-house paralegal and executive assistant. Over the years, we fostered a meaningful relationship as such and trusted one another with high profile professional matters relating to the companies which were led by Michael.

Michael is and always has been an intelligent, driven and, most importantly, a caring individual and businessman. He continually regarded the business ahead of any personal gain and frequently, and possibly to his detriment, made sure that employee needs, including payroll, were always placed in the forefront of his obligations. In fact, he often paid the salaries of his employees before taking his own salary. Additionally, he remained loyal to his employees by restructuring their roles as necessary to avoid layoffs.

Throughout the years working alongside Michael, I noticed and was mesmerized by his compassion and wholehearted approach to the company. Consulting his Board of Directors, his actions were always in the best interest of the company and its employees. He was overly generous and often under-appreciated, yet he continued his laborious journey conducting business and painfully growing his company with his best efforts. His ultimate goal was to share the rewards with his employees. He instilled an ethic of hard work and most of all, his actions to maintaining a successful company spurred hope, at least in myself.

I hope this helps you to understand the integrity of Michael Lucas and, in some way, show you the kind and decent man who has done his best for his family, friends, and company. Should you have any questions or would like further discussion, please do not hesitate to contact me.

Sincerely,

*Janell Riley*

Janell Riley

John Lucas

November 16, 2021

725 N Dobson Rd #142

Chandler, Az 85224

To: Honorable Anthony J Battaglia

Michael has shown me how to break free from myself. His unwavering care, love, and support gave me the tools to value and care for myself. He taught me to find the good in bad situations to learn from them. He's shown me that making mistakes is okay if you correct them. I know what compassion looks like because of the way he helps those in need. He's taught me that happiness exists, and that I can feel it. If anyone is going through a life crisis, he is always front and center comforting in any way possible. He gave me life. He's given me hope.

There's nothing in this world I can't overcome with Michael in my corner.

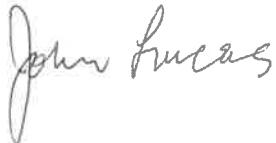
Michael was a huge part of my recovery from addiction. Before Michael stepped in, I had been to many treatment centers but never one that took the time to understand the triggers that fueled my addiction. Understanding someone's addiction doesn't come easy but Michael went to great lengths to understand why I wasn't able to stay sober. To understand, Michael paid for me to see multiple therapist that specialized in family/ptsd/addiction as my triggers were about my father's drinking, extramarital affairs, abuse towards my mother and my brother / best friend's suicide. He understood a kid needed serious help and was more involved than I could have ever imagined. Despite criticism from others, he stood by my side and continued loving me as if I was his own. His compassion and willingness to always take the time to understand how

each therapy session went. Some therapy sessions included reliving some of the toughest moments in my life and having him in my corner for those moments made all the world of difference.

With Michael's love and support, I was able to find my normalcy again. He not only goes above and beyond for me but for anyone every chance he gets, seemingly without thought or hesitation. When Michael is present with you he is present and is very thoughtful, always looking for ways to help others. Of everyone I know, he is the most caring and forgiving individual. If he tells someone he'll do something; he'll try his best to get it done. Michael over the years has always put those he loves and cares first and majority of the time loses sleep over things he has to do. He's an amazing mentor to many and is certainly my best friend. Now this is not to say this man is perfect. Although we all try to be. Michael made it known that he's made some bad choices but it is worth noting that the good most certainly, outweighs the bad by far and he is very ashamed of the decisions he's made that led us here today.

I ask you to please be thoughtful of my letter today and allow Michael to continue being a great mentor to myself and many others.

Thank you

A handwritten signature in black ink that reads "John Lucas". The signature is fluid and cursive, with "John" on the top line and "Lucas" on the bottom line.

Kimberly Church  
725 N Dobson Rd #142  
Chandler, Az 85224

November 16, 2021

To: Honorable Anthony J Battaglia

I have known Michael Lucas since he was 16 years of age as he is my brother-in-law but really, I consider him more of a brother, I have witnessed a remarkable growth of Michael over the years, from the good times to the bad times but through it all Michael has always I believe the rock of the family, and always eager to lend a helping hand from helping tow people's cars that are stuck in the snow to cutting down Christmas trees and giving them to friends and family for the holidays Michael always had an adventure going on.

Michael always looks to brighten other people's day. Most recently, Michael has helped my son John Lucas recovers from a long battle with drug addiction. The drug addiction almost took his life multiple times and if it wasn't for Michael, I am sure my son would have passed away. He is a blessing to my family and he has always been that person in my life that I know I can count on at any time of day or night. Michael will always be there to lend a shoulder to cry on or just lend an ear to listen to and for that I am eternally grateful for.

One of my favorite traits about Michael is that he is very thoughtful with everything he does, He is caring and loving he always calls on special occasions sends words of encouragement when you need it the most. To many like myself Michael above and beyond a good person, he has demonstrated honesty, integrity, and fairness consistently through the years in which I have been directly involved. Michael is a loving father, uncle, and brother.

*Sincerely,  
Kimberly Church*

Kimberly Church  
725 N Dobson Rd #142  
Chandler, Az 85224

November 16, 2021

To: Honorable Anthony J Battaglia

I have known Michael Lucas since he was 16 years of age as he is my brother-in-law but really, I consider him more of a brother, I have witnessed a remarkable growth of Michael over the years, from the good times to the bad times but through it all Michael has always I believe the rock of the family, and always eager to lend a helping hand from helping tow people's cars that are stuck in the snow to cutting down Christmas trees and giving them to friends and family for the holidays Michael always had an adventure going on.

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*Sincerely,  
Kimberly Church*

2/2/22

Dear Honorable Judge,

I am writing to you today on behalf of Michael Todd Lucas. I have known him since I was eight and he has always been more than a brother-in-law to me; he has been my big brother.

Michael consistently has been someone that I can turn to if I need help. I can cite several examples over the years, yet I will list a couple for brevity purposes. Before I was to start college, he drove me around to several schools in Southern California; I have always been touched by that gesture of kindness. Additionally, just over 15 years ago when I had lived in Southern California, I had someone enter my life who intended to harm me, and during that time, I decided to relocate to Texas. Michael helped me out every step of the way, with logistics and relocation, getting settled, and more importantly, helping me feel more secure about my new life in Texas.

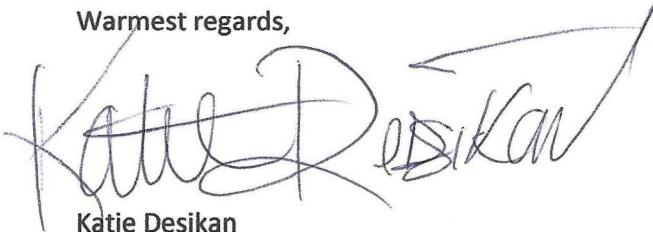
Michael has been such a tremendous emotional support to me over the years as well. I have dealt with so many personal emotional issues over the years, and I always felt I could come to him for compassion, understanding, encouragement, optimism, and a good laugh. For instance, I married later in life, and that had been very hard on me, and he kept encouraging me along the way, until I met my husband. When that marriage ended, Michael was right there to lend an emotional helping hand.

I have the utmost respect Michael as he has been there for me over the years in the most difficult of times and I can count on him to be there for me, really love and understand me.

Sharing this personal information with you has not been easy for me, yet it speaks to his incredible character. I could keep writing and writing, as I am an elementary school teacher, (for both Catholic and public schools), and you know how important character is to us; we teach it, preach it, and live it daily.

Thank you for taking the time to read this message. I wish you the best as you make your decision moving forward.

Warmest regards,



Katie Desikan

1 RANDY S. GROSSMAN  
2 United States Attorney  
3 Charles A. O'Reilly  
4 Special Assistant United States Attorney  
5 Federal Office Building  
6 880 Front Street, Room 6293  
7 San Diego, California 92101-8893  
8 Telephone: (202) 616-0115  
9 Email: charles.a.o'reilly@usdoj.gov  
10 Attorneys for United States of America

11

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14

15 UNITED STATES OF AMERICA,  
16 Plaintiff,  
17 v.  
18 MICHAEL TODD LUCAS,  
19 Defendant.

Case No. 3:21-cr-00851-AJB

**UNITED STATES' RESPONSE IN  
OPPOSITION TO DEFENDANT'S  
MOTION FOR DOWNWARD  
DEPARTURE UNDER 5K2.0  
MEMORANDUM**

Date: February 10, 2022  
Time: 9:00 a.m.  
Courtroom: 4A

**THE HON. ANTHONY J. BATTALIA**

20 The UNITED STATES OF AMERICA, by and through its counsel, Randy  
21 Grossman, U.S. Attorney, and Charles A. O'Reilly, Special Assistant U.S. Attorney,  
22 hereby files its opposition to Defendant Michael Todd Lucas' motion for a downward  
23 departure pursuant to U.S.S.G. §5K2.0. Contrary to Mr. Lucas' assertions, this case does  
24 not lie outside the "heartland" of typical employment tax crimes.

25 **I. INTRODUCTION**

26 No one contests that Mr. Lucas is guilty of a tax crime, and Mr. Lucas is not charged  
27 with tax evasion. Rather, as Mr. Lucas acknowledges, for many years he willfully failed to

1 pay over the payroll taxes he withheld from employees' salaries, treated the U.S.  
 2 government like any other creditor, and would throw money at the IRS to "buy time".  
 3 In 2011, IRS notified Mr. Lucas that TradeMotion LLC's payroll taxes were not being paid  
 4 over and, for the next several years, Mr. Lucas delayed and resisted coming into  
 5 compliance. As related by Mr. Lucas, his attention had shifted to other matters and his  
 6 "personal expenses began increasing, while employment taxes of the automotive company,  
 7 TradeMotion, were not being paid." Motion at 4:23-24.

8 Mr. Lucas asserts that "the issue confronting this Court is whether a departure is  
 9 warranted, when the vast majority of that which would have gone to paying taxes was  
 10 diverted to paying operation expenses, including employee salaries." Motion 9:9 11.  
 11 However, Mr. Lucas provides no evidence that "vast majority" of the monies were diverted  
 12 to paying operation expenses other than his self-serving statements to the U.S. Probation  
 13 Officer that he was "trying to keep his business afloat" and that he "thought he would catch  
 14 up later." *Id.* at 11:4-6. His assertion that he intended to pay is belied by his admission that  
 15 he would make payments to "buy time" and by his failure to make any payments towards  
 16 his delinquent employment taxes since pleading guilty in this case on April 6, 2021.<sup>1</sup> IRS  
 17 records reflect that the last payroll tax payment Mr. Lucas made was a \$93,339.08 federal  
 18 tax deposit made on behalf of i3Brands for the third quarter of 2017, received by IRS  
 19 on November 3, 2017. In 2017, i3Brands sold assets to Reynolds and Reynolds for  
 20 \$8.5 million; on May 1, 2017, Reynolds and Reynolds remitted \$694,898.24 of these  
 21 proceeds directly to the IRS to pay i3Brands' outstanding payroll tax liabilities.

22 With respect to Mr. Lucas' speculation regarding the change in revenue officers (not  
 23 revenue agent as indicated in Mr. Lucas' motion) handling his case, the IRS application of  
 24 payments to earlier quarters was neither "unorthodox" nor "contrary to standard IRS  
 25 protocols", IRS did not replace the revenue officer because of any "breach of protocol" nor

---

26  
 27 <sup>1</sup> As part of the plea agreement, the parties agreed to jointly request a six month delay in sentencing  
 28 "to allow Defendant time within which to accumulate funds to pay all or a significant portion of the  
 anticipated restitution before sentencing." Plea Agreement X.F. – Parties Recommendation Regarding  
 Custody and Sentencing Date.

1 was the criminal investigation that resulted in this prosecution the result of a referral by  
 2 IRS civil authorities to IRS Criminal Investigation. *See* Defense Motion 5:2-14. Also  
 3 contrary to his assertion, evidence is sorely lacking that Mr. “Lucas has made every effort  
 4 to repay the taxes” owed. To the contrary, Mr. Lucas appears to have used payments to  
 5 ward off harsher IRS efforts to collect the payroll taxes withheld from his employees. As  
 6 the Presentence Report states, no Sentencing Guideline factors that warrant a departure  
 7 from the Sentencing Guideline range. PSR at 15:77.

## 8 **II. DEPARTURE PURSUANT TO U.S.S.G. § 5K2.0 UNWARRANTED**

9 As stated in Section 5K2.0 of the Sentencing Guidelines, “[t]he sentencing court  
 10 may depart from the applicable guideline range if . . . the court finds, pursuant to 18 U.S.C.  
 11 § 3553(b)(1), that there exists an aggravating or mitigating circumstance . . . of a kind, or  
 12 to a degree, not adequately taken into consideration by the Sentencing Commission in  
 13 formulating the guidelines that, in order to advance the objectives set forth in 18 U.S.C.  
 14 § 3553(a)(2), should result in a sentence different from that described.” Section 5K2.0 then  
 15 identifies some circumstances that may not have been adequately taken into consideration,  
 16 and notes that “a departure may be warranted in the exceptional case in which there is  
 17 present a circumstance that the Commission has not identified in the guidelines but that  
 18 nevertheless is relevant to determining the appropriate sentence.” U.S.S.G.  
 19 § 5K2.0(a)(2)(B).

20 Mr. Lucas identifies no mitigating factor not taken into consideration by the  
 21 Sentencing Commission and this is not an exceptional case. Unlike in *United States v.*  
 22 *Brennick*, cited by Mr. Lucas, where the court noted “Brennick’s pattern before financial  
 23 difficulties engulfed him was to retain the use of the funds in question for periods of four  
 24 to six months and then to pay over the funds, adding penalties and interest, Lucas presents  
 25 no such evidence. The *Brennick* court held that, where the evidence indicates that the  
 26 defendant anticipates “a temporary delay in payment – where the defendant intended to  
 27 pay – is not a ‘typical’ or ‘heartland’ case of tax evasion.” 134 F.3d 10, 14 (1st Cir. 1998).

1 Here, as noted in the PSR, Mr. Lucas would make some payments when pestered by the  
2 IRS, but otherwise went years without making payments.

3 **III. STATEMENT OF FACTS**

4 On March 18, 2010, IRS assigned a revenue officer based in Texas to collect past  
5 due employment taxes from Intelligentz Corporation, one of Mr. Lucas companies. After  
6 failing to reach Intelligentz Corporation's Controller and Power of Attorney for several  
7 months, in September 2010, the IRS Revenue Officer filed liens on the business' bank  
8 accounts. Following the imposition of the liens, the Controller contacted the IRS Revenue  
9 Officer and the two, along with Mr. Lucas' brother who served as Intelligentz  
10 Corporation's Vice President of Operations, met on September 10, 2010. During that  
11 meeting Intelligentz Corporation officers agreed to provide specified financial information  
12 to the IRS Revenue Officer.

13 Ten months later, in January 2011, Intelligentz Corporation had not provided the  
14 financial information requested, so the IRS Revenue Officer prepared and attempted to  
15 serve summonses to Mr. Lucas and Intelligentz's Controller. While the efforts to serve the  
16 summons were unsuccessful, the following morning the Controller telephoned to schedule  
17 an appointment, advising that he had the returns for 2004 through the present available.  
18 However, the day of the scheduled meeting Mr. Lucas' brother notified the Controller that  
19 "Michael wants you to hand in SecurLynx, Pangaea and IC not IAC yet. Michael will be  
20 here in a few minutes and wants to go over this with you." The Controller resigned and the  
21 appointment was cancelled.

22 Mr. Lucas met with the IRS Revenue Officer in March 2011 but did not provide the  
23 requested documents. Mr. Lucas stated they were expecting increased income due to a  
24 recent contract. The IRS Revenue Officer issued Mr. Lucas and his new Power of Attorney  
25 a new summons with an April 22, 2011 deadline. The Power of Attorney provided  
26 unsigned delinquent returns prior to that deadline, but because the returns were not signed  
27 IRS could not process them. In October 2011 Mr. Lucas advised the IRS Revenue Officer

28

1 that he had hired a bookkeeper to complete all the required tax returns and, that while he  
2 did not have sufficient funds to fully pay presently, he had an investor that would provide  
3 the necessary funds. Similar promises that someone would be preparing returns and funds  
4 to pay in full would be obtained through 2014.

5 In late 2014, IRS referred the case to IRS Criminal Investigation in San Diego as a  
6 fraud referral. The IRS Revenue Officer advised the IRS CI Special Agent that Mr. Lucas  
7 said he had just sold a company for \$17 million and was ready to pay all his liabilities.  
8 Based upon that representation, IRS CI declined the criminal referral; nevertheless  
9 Mr. Lucas did not pay his liabilities.

10 In 2015, IRS assigned the case to a revenue officer based in San Diego because the  
11 accounting department for Mr. Lucas' businesses was based in that area. The San Diego-  
12 based IRS Revenue Officer continued efforts to collect the delinquent employment tax  
13 liabilities by levying bank accounts Lucas controlled, but Lucas switched deposits to other  
14 accounts. An offer-in-compromise Lucas filed in 2016 was rejected in July 2017. In a letter  
15 postmarked April 21, 2017, addressed to Internal Revenue Service, Attn: CID, an  
16 anonymous letter alleged that Mr. Lucas knowingly failed to pay employment taxes  
17 during 2016 and into 2017, and was using attorney trust accounts to hide his receipt of the  
18 proceeds of sales of businesses to avoid taxes. Based upon this letter, IRS CI opened an  
19 investigation and, in early 2018, requested U.S. Department of Justice authorization to  
20 conduct a grand jury investigation.

21 During the years 2011 through 2016, Mr. Lucas lived well, spending hundreds of  
22 thousands of dollars each year on himself and his family. As noted in the PSR, Mr. Lucas  
23 made some payments in 2017 "in response to attempts made by IRS Revenue Officers."  
24 PSR at 4:8. By way of example, the PSR identifies that when Mr. Lucas "received  
25 approximately \$8.5 million in an asset sale . . . he paid approximately \$700,000 to the  
26 IRS." Mr. Lucas spent \$952,000 on residential rent, \$121,000 for private school tuition,  
27 \$326,000 on car expenses and transferred more than \$900,000 to family members. *Id.*

28

## IV. SENTENCING RECOMMENDATION

As previously noted, the United States agrees with the probation officer's calculations and that the base offense level is 20 because Mr. Lucas' criminal conduct caused a tax loss totaling \$1,410,008.04. No special offense characteristics apply, and Mr. Lucas timely notified the government of his intention to plead guilty and has continued to accept responsibility under USSG § 3E1.1(a), meriting a three-level reduction in his offense level to offense level 17. Finally, Mr. Lucas' Criminal History is Category I, resulting in a guideline range of imprisonment of between 24 and 30 months. Under the Guidelines, Defendant is not eligible for a sentence of probation. USSG § 5C1.1(f).

The PSR identifies no reasons warranting a non-guideline sentence, appearing to substitute its judgment of what will serve as deterrence for that of the Sentencing Guideline Commission. In recommending a sentence one-half of that calculated under the Sentencing Guidelines, the PSR relies on Mr. Lucas' assertions that he "wasn't trying to take money and not pay taxes." PSR 17:86. However, Mr. Lucas used significant funds to live a very comfortable lifestyle and deliberately failed to pay over the payroll taxes his companies withheld from employees.

## V. CONCLUSION

Defendant's criminal conduct calls for a guideline-range sentence which the United States believes is appropriate; the United States recommends a sentence of 24 months imprisonment, a three-year term of supervised release and restitution in the amount of \$4,904,722.33 or as determined by the Court.

Dated: February 3, 2022

Respectfully submitted,

RANDY S. GROSSMAN  
United States Attorney

Charles A. O'Reilly  
CHARLES A. O'REILLY  
Special Assistant U.S. Attorney

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA  
**V.**  
 MICHAEL TODD LUCAS (1)

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

Case Number: 3:21-CR-00851-AJB

ANDREW YOUNG  
 Defendant's Attorney

**USM Number** 37612-509

-

**THE DEFENDANT:**

pleaded guilty to count(s) ONE (1) OF THE INFORMATION

was found guilty on count(s) \_\_\_\_\_  
 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<b><u>Title and Section / Nature of Offense</u></b>	<b><u>Count</u></b>
26:7202 - Failure To Account For and Pay Over Federal Employment Taxes	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment.  
 The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_ is dismissed on the motion of the United States.

Assessment : \$100.00 - IMPOSED

-

JVTA Assessment\*: \$

-

\*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

Fine waived  Forfeiture pursuant to order filed \_\_\_\_\_, included herein.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material change in the defendant's economic circumstances.

FEBRUARY 10, 2022

Date of Imposition of Sentence

  
 HON. ANTHONY J. BATTAGLIA  
 UNITED STATES DISTRICT JUDGE

AO 245B (C ASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 2 of 6

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: EIGHTEEN (18) MONTHS

- Sentence imposed pursuant to Title 8 USC Section 1326(b).
- The court makes the following recommendations to the Bureau of Prisons:  
- PLACEMENT DESIGNATION TO THE WESTERN REGION OF THE UNITED STATES
- The defendant is remanded to the custody of the United States Marshal.
- The defendant must surrender to the United States Marshal for this district:  
 at \_\_\_\_\_ A.M. on \_\_\_\_\_  
 as notified by the United States Marshal.
- The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:  
 on or before 4/8/2022 BY 11:00 AM  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

---

UNITED STATES MARSHAL

---

By \_\_\_\_\_ DEPUTY UNITED STATES MARSHAL

AO 245B (C ASD Rev. 1/19) Judgment in a Criminal Case

---

DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 3 of 6

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant will be on supervised release for a term of:  
THREE (3) YEARS

**MANDATORY CONDITIONS**

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.  
 The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4.  The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5.  The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6.  The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7.  The defendant must participate in an approved program for domestic violence. (check if applicable)

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

AO 245B (C ASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: MICHAEL TODD LUCAS (1)  
 CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 4 of 6

## **STANDARD CONDITIONS OF SUPERVISION**

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (C ASD Rev. 1/19) Judgment in a Criminal Case

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DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 5 of 6

**SPECIAL CONDITIONS OF SUPERVISION**

1. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
2. Submit your person, property, house, residence, vehicle, papers, [computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The offender must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the offender has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
3. Provide complete disclosure of personal and business financial records to the probation officer as requested.
4. Notify the Collections Unit, United States Attorney's Office, of any interest in property obtained, directly or indirectly, including any interest obtained under any other name, or entity, including a trust, partnership or corporation.
5. Notify the Collections Unit, United States Attorney's Office, before transferring any interest in property owned, directly or indirectly, including any interest held or owned under any other name, or entity, including a trust, partnership or corporation.
6. Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.

//

AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

---

DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page **6** of **6****RESTITUTION**

The defendant shall pay restitution in the amount of \$ 4,904,722.33 unto the United States of America.

Pay restitution in the amount of \$ 4,904,722.33 to the IRS through the Clerk, U. S. District Court. Payment of restitution shall be forthwith. During any period of incarceration, the defendant shall pay restitution through the Inmate Financial Responsibility Program at the rate of 50% of the defendant's income, or \$25.00 per quarter, whichever is greater. The defendant shall pay the restitution during his supervised release at the rate of \$1,000 per month. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the restitution judgment.

Until restitution has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

Interest will not be incurred on the amount in this restitution order.

1 James D. Henderson, Jr.  
2 **THE LAW OFFICES OF JAMES D. HENDERSON, JR.**  
3 2530 Wilshire Blvd., Suite 210  
4 Santa Monica, CA 90403  
5 Tel: (310) 264-1898  
6 [jdhjunior@gmail.com](mailto:jdhjunior@gmail.com)

7  
8 Attorney for Defendant  
9 MICHAEL T. LUCAS  
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**IN THE UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
MICHAEL T. LUCAS,  
Defendant.

**Case No. 3:21-cr-00851-AJB**  
Hon. Anthony J. Battaglia  
**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that the undersigned counsel hereby files his  
appearance on behalf of the Defendant, Michael T. Lucas, in the above-captioned  
proceeding.

DATED: March 28, 2022

**THE LAW OFFICES OF JAMES D.  
HENDERSON, JR.**

By: /s/James D. Henderson, Jr.  
JAMES D. HENDERSON, JR.  
Attorney for Defendant  
MICHAEL T. LUCAS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 29, 2022, I electronically transmitted the document entitled **NOTICE OF APPEARANCE** to the Clerk of Court using the ECF system for filing as well as transmittal and service to the ECF registrants on file in this matter.

/s/ James D. Henderson, Jr.  
JAMES D. HENDERSON, JR.

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

**Case No. 3:21-cr-00851-AJB**

Plaintiff,

Hon. Anthony J. Battaglia

V.

**ORDER GRANTING EXTENSION OF  
TIME TO REPORT FOR  
SENTENCING**

MICHAEL T. LUCAS,

Defendant.

Having reviewed the unopposed *Ex Parte* Application of Defendant Michael T. Lucas and GOOD CAUSE SHOWING, the original reporting date of Defendant Lucas of 12:00 p.m. on April 8, 2022 is hereby extended until 12:00 p.m. on May 23, 2022. Bond Exoneration Hearing is reset for 5/31/2022 at 2:00 PM. There will be no further extensions.

IT SO ORDERED.

Dated: March 29, 2022

Anthony J. Battaglia  
Hon. Anthony J. Battaglia  
United States District Judge

1 James D. Henderson, Jr.  
2 **THE LAW OFFICES OF JAMES D. HENDERSON, JR.**  
3 2530 Wilshire Blvd., Suite 210  
4 Santa Monica, CA 90403  
5 Tel: (310) 264-1898  
6 [jdhjunior@gmail.com](mailto:jdhjunior@gmail.com)

5 Attorney for Defendant  
6 MICHAEL T. LUCAS

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

MICHAEL T. LUCAS.

Defendant.

Case No. 3:21-cr-00851-AJB

Hon. Anthony J. Battaglia

**DEFENDANT MICHAEL T. LUCAS'S  
EX PARTE APPLICATION TO  
CONTINUE REPORTING DATE DUE  
TO MEDICAL EMERGENCY;  
DECLARATIONS OF MICHAEL T.  
LUCAS AND JAMES D. HENDERSON,  
JR.**

**[NO HEARING REQUESTED]**

Current Reporting Date: May 23, 2022

NOW COMES the Defendant, Michael T. Lucas, by and though his counsel,

25 James D. Henderson, Jr., and files this *Ex Parte* Application to Continue his Reporting  
26 Date approximately six weeks from 12:00 p.m. May 23, 2022 until 12:00 p.m. on July 5,  
27 2022. Undersigned counsel believes good cause exists because Mr. Lucas requires  
28 emergency ventral hernia repair surgery and will require six weeks of rehabilitation.

1 The Special Assistant United States Attorney on this matter, Charles O'Reilly, has stated  
2 that the U.S. Attorney's Office will take no position as to the relief requested herein, and  
3 no hearing date is requested.

4 Pursuant to this Court's Civil Procedure Rule III.1, undersigned counsel discussed  
5 the contents of the instant *ex parte* application with SAUSA Charles O'Reilly on the  
6 morning of May 23, 2022. Declaration of James D. Henderson, Jr., ¶ 2. Undersigned  
7 counsel thereafter shared the application with Mr. O'Reilly later that morning and  
8 contacted the clerk of the Court prior to filing the application. Henderson Decl., ¶ 3. As  
9 noted, SAUSA O'Reilly informed undersigned counsel that the U.S. Attorney's Office  
10 would take no positions regarding the application and the relief sought herein.  
11 Henderson Decl., ¶ 4.

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13 **1. GOOD CAUSE EXISTS TO CONTINUE MR. LUCAS'S REPORTING**  
14 **DATE BECUAE MR. LUCAS NEEDS IMMEDIATE VENTRAL**  
15 **HERNIA REPAIR SURGERY.**

16 On February 10, 2022, this Court sentenced Mr. Lucas to 18 months following his  
17 guilty plea to a failure to pay federal employment taxes in violation of 26 U.S.C. §7202.  
18 The Court also ordered that Mr. Lucas pay restitution to the government in the amount  
19 of \$4,904,722.33. Finally, the Court ordered Mr. Lucas to report for incarceration no  
20 later than April 8, 2022.

21 Pursuant to an earlier *Ex Parte* Application, on March 29, 2022 this Court issued  
22 an order continuing Mr. Lucas' reporting date to May 23, 2022 (Docket No. 36) to allow  
23 Mr. Lucas to attempt to complete an ongoing business transaction.<sup>1</sup>

24 On or about May 5, 2022, Mr. Lucas contracted a severe respiratory illness. While  
25 tests for COVID were negative, Mr. Lucas developed a severe cough that caused blood  
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28 <sup>1</sup> While that order stated that there would be no further continuances, undersigned  
counsel nonetheless requests the relief sought herein because it relates to a medical  
emergency.

1 in his phlegm for three days. He began to take 800 mg of ibuprofen to manage the pain.  
2 Declaration of Michael T. Lucas, ¶ 2.

3 Mr. Lucas was scheduled to travel to Washington DC on May 10, 2022 to speak  
4 before a Congressional Committee on intellectual property issues, and because his  
5 symptoms appeared to be subsiding by that point, he made the trip. Upon arrival, Mr.  
6 Lucas noticed, however, what appeared to be a hernia protruding from his abdomen. The  
7 pain also began to worsen, and Mr. Lucas' cancelled additional meetings and returned to  
8 San Diego. Lucas Decl., ¶ 3.

9 Mr. Lucas attempted to rest at home throughout the following weekend, but the  
10 pain in his abdomen had increased by Monday, May 16. Because of the pain, Mr. Lucas  
11 called Dr. Matthew Schultzel, a colorectal surgical specialist in La Jolla and was  
12 informed that the earliest available appointment was on May 20, 2022 at 3:15 p.m.  
13 Lucas Decl., ¶ 4.

14 Dr. Schultzel was Mr. Lucas' prior surgeon for an emergency appendectomy in  
15 June of 2019. That appendicitis lead to life-threatening sepsis, but Mr. Lucas recovered  
16 under Dr. Schultzel and trusts his judgment and professionalism. Lucas Decl., ¶ 5.

17 After examining Mr. Lucas, Dr. Schultzel confirmed that Mr. Lucas has a ventral  
18 hernia and would require repair surgery as soon as possible. Accordingly, Dr. Schultzel  
19 scheduled surgery for the earliest possible date of May 26, 2022. Lucas Decl., ¶ 6.

20 Dr. Schultzel also noted that Mr. Lucas' blood pressure was abnormally and  
21 dangerously high at 162/92 because of the pain associated with the hernia. Mr. Lucas'  
22 blood pressure in prior exams was generally in the normal range, between 120/80 and  
23 130/80. Lucas Decl., ¶ 7.

24 Because of COVID protocol, Sharp Medical Hospital (where the surgery will take  
25 place in the event the Court grants the instant application) in San Diego requires a  
26 negative COVID test three days prior to surgery, so Mr. Lucas is scheduled for a test on  
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1 May 23, and, as noted, surgery is scheduled for May 26. Lucas Decl., ¶ 8. Dr. Schultzel  
2 informed Mr. Lucas that the recovery period for ventral hernia repair surgery is  
3 approximately six weeks. Lucas Decl., ¶ 9.

4 Following his appointment with Dr. Schultzel, Mr. Lucas called the federal prison  
5 at Lompoc, where he is scheduled to report. The person on duty informed Mr. Lucas that  
6 a hernia was not something that was treated on-site, but was unwilling, however, to  
7 discuss any further details. Lucas Decl., ¶ 10.

8 Based on the above, Mr. Lucas respectfully submits that good cause exists to  
9 extend his reporting approximately six weeks until July 5, 2022.

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## 2. **CONCLUSION**

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Based on the foregoing, and good cause showing, Defendant Michael T. Lucas  
respectfully requests that this Court issue an order continuing Mr. Lucas's reporting date  
from 12:00 p.m. May 23, 2022 until 12:00 p.m. Tuesday, July 5, 2022 to allow Mr.  
Lucas to undergo emergency hernia repair surgery and recover therefrom.

DATED: May 23, 2022

**THE LAW OFFICES OF JAMES D.  
HENDERSON, JR.**

By: /s/James D. Henderson, Jr.  
JAMES D. HENDERSON, JR.  
Attorney for Defendant  
MICHAEL T. LUCAS

**DECLARATION OF JAMES D. HENDERSON, JR.**

I, James D. Henderson, Jr., hereby declare as follows:

1. I am an attorney licensed to practice in the State of California as well as the Southern District of California. I am making this declaration based on my own personal knowledge, and if asked to testify thereto, I could and would do so competently.
  2. Pursuant to this Court’s Civil Procedure Rule III.1, I discussed the contents of the instant *ex parte* application with SAUSA Charles O’Reilly on the morning of May 23, 2022.
  3. Later that day, I shared a copy of the proposed *ex parte* application with SAUSA O’Reilly and called this Court’s judicial assistant prior to filing the application.
  4. SAUSA O’Reilly informed me that the U.S. Attorney’s Office would take no position on the application, or the relief sought therein.
  5. Additionally, on Saturday, May 21, I received an email from Angelica Fisk, the U.S. Pretrial Services Officer handling Mr. Lucas’ matter. She stated therein that she would “defer to the Court” as to the instant *Ex Parte* Application.

I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct.

So sworn this 23<sup>rd</sup> day of May, 2022 in Santa Monica, California.

/s/James D. Henderson, Jr.  
JAMES D. HENDERSON, JR.

**DECLARATION OF MICHAEL T. LUCAS**

I, Michael T. Lucas, hereby declare as follows:

1. I am the defendant in the above-captioned matter. I am making this declaration based on my own personal knowledge, and if asked to testify thereto, I could and would do so competently.
  1. On or about May 5, 2022, I contracted a severe respiratory illness. Tests indicated it was not COVID, but I nonetheless developed a severe cough that caused blood in my phlegm for approximately three days. I began taking 800 mg of ibuprofen to manage the pain.
  2. I was scheduled to travel to Washington DC on May 10, 2022 to speak before a Congressional Committee on intellectual property issues, and because my symptoms appeared to be subsiding by that point, I made the trip. Upon arrival, I noticed, however, what appeared to be a hernia protruding from my abdomen. The pain also began to worsen, and I cancelled certain additional meetings and returned to San Diego.
  3. Even though I attempted to rest throughout the weekend, the pain in my abdomen has increased by Monday, May 16. Accordingly, I called Dr. Matthew Schultzel, a colorectal surgical specialist in La Jolla. I was informed that the earliest appointment I could make to see Dr. Schultzel was on May 20, 2022 at 3:15 p.m. (Dr. Schultzel can be reached at 858-207-3117, and his main office address is 4150 Regents Park Row, Suite 345, La Jolla, CA 92037. His email address is info@sdcolons.com).
  4. I selected Dr. Schultzel because he previously performed an emergency appendectomy on me in June of 2019. That appendicitis lead to life-threatening sepsis, but I recovered under Dr. Schultzel's care and trust his judgment and professionalism.

5. Upon examination, Dr. Schultzel confirmed that I have a ventral hernia and that I required repair surgery as soon as possible, and scheduled surgery for the earliest possible date, which date is Thursday, May 26.
6. Dr. Schultzel also noted that my blood pressure was abnormally and dangerously high at 162/92 because of the pain. My blood pressure in prior exams was generally between 120/80 and 130/80.
7. Because of COVID, Sharp Medical Hospital in San Diego requires a negative COVID test three days prior to surgery, so I am scheduled for a test on May 23, and surgery is scheduled for May 26.
8. Dr. Schultzel informed my that the recovery period for ventral hernia repair surgery is approximately six weeks.
9. Following my appointment with Dr. Schultzel, I called the federal prison at Lompoc, where I am scheduled to report. I spoke with the person on duty, and he informed me that a hernia was not something that was treated on-site. The person on duty was unwilling, however, to discuss any further details.
10. I am currently in Lompoc in the event the Court denies this application, but I will be able to take a COVID test today (and not delay the surgery) in the event the Court does grant it.

I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct.

So sworn this 23<sup>rd</sup> day of May, 2022 in Lompoc, California.

/s/Michael T. Lucas  
MICHAEL T. LUCAS

1  
2 **CERTIFICATE OF SERVICE**  
3

4 I HEREBY CERTIFY that on May 23, 2022, I electronically transmitted the  
5 document entitled **DEFENDANT MICHAEL T. LUCAS'S *EX PARTE***  
6 **APPLICATION TO CONTINUE REPORTING DATE DUE TO MEDICAL**  
7 **EMERGENCY; DECLARATIONS OF MICHAEL T. LUCAS AND JAMES D.**  
8 **HENDERSON, JR.** to the Clerk of Court using the ECF system for filing as well  
9 as transmittal and service to the ECF registrants on file in this matter.  
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*/s/ James D. Henderson, Jr.*  
10 JAMES D. HENDERSON, JR.  
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**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

**Case No. 3:21-cr-00851-AJB**

Plaintiff,

Hon. Anthony J. Battaglia

V.

**ORDER GRANTING EXTENSION OF  
TIME TO REPORT FOR  
SENTENCING**

MICHAEL T. LUCAS,

Defendant.

Having reviewed the unopposed *Ex Parte* Application of Defendant Michael T. Lucas and GOOD CAUSE SHOWING due to Defendant Lucas' medical emergency, the scheduled reporting date of Defendant Lucas of 12:00 p.m. on May 23, 2022 is hereby extended until 12:00 p.m. on July 5, 2022. Bond Exoneration Hearing previously set for May 31, 2022 is reset for July 11, 2022 at 2:00 PM.

IT SO ORDERED.

Dated: May 24, 2022

Anthony J. Battaglia  
Hon. Anthony J. Battaglia  
United States District Judge

*5/5*  
*4/8/22*

# UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA  
**V.**  
 MICHAEL TODD LUCAS (1)

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

Case Number: 3:21-CR-00851-AJB

USM Number 37612-509

-

THE DEFENDANT:

pleaded guilty to count(s) ONE (1) OF THE INFORMATION

was found guilty on count(s) \_\_\_\_\_  
 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

**Title and Section / Nature of Offense**

26:7202 - Failure To Account For and Pay Over Federal Employment Taxes

**Count**  
1

ANDREW YOUNG  
 Defendant's Attorney

**FILED**

AUG 09 2022

CLERK U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 BY *a* DEPUTY

The defendant is sentenced as provided in pages 2 through 5 of this judgment.  
 The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_ is dismissed on the motion of the United States.

Assessment: \$100.00 - IMPOSED

JVTA Assessment\*: \$ \_\_\_\_\_

\*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

Fine waived  Forfeiture pursuant to order filed \_\_\_\_\_

, included herein.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material change in the defendant's economic circumstances.

FEBRUARY 10, 2022

Date of Imposition of Sentence

*Anthony J. Battaglia*

HON. ANTHONY J. BATTAGLIA  
 UNITED STATES DISTRICT JUDGE

AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 2 of 6

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **EIGHTEEN (18) MONTHS**

- Sentence imposed pursuant to Title 8 USC Section 1326(b).
  - The court makes the following recommendations to the Bureau of Prisons:
    - PLACEMENT DESIGNATION TO THE WESTERN REGION OF THE UNITED STATES
  - The defendant is remanded to the custody of the United States Marshal.
  - The defendant must surrender to the United States Marshal for this district:
    - at \_\_\_\_\_ A.M. on \_\_\_\_\_
    - as notified by the United States Marshal.
  - The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:
    - on or before 4/8/2022 BY 11:00 AM
    - as notified by the United States Marshal.
    - as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on

W.B.

Longue

at \_\_\_\_\_, with a certified copy of this judgment

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

---

DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 3 of 6

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant will be on supervised release for a term of:  
THREE (3) YEARS

**MANDATORY CONDITIONS**

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.  
 The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4.  The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5.  The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6.  The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7.  The defendant must participate in an approved program for domestic violence. (check if applicable)

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MICHAEL TODD LUCAS (1)  
 CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 4 of 6

## STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (C ASD Rev. 1/19) Judgment in a Criminal Case

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DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 5 of 6

**SPECIAL CONDITIONS OF SUPERVISION**

1. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
2. Submit your person, property, house, residence, vehicle, papers, [computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The offender must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the offender has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
3. Provide complete disclosure of personal and business financial records to the probation officer as requested.
4. Notify the Collections Unit, United States Attorney's Office, of any interest in property obtained, directly or indirectly, including any interest obtained under any other name, or entity, including a trust, partnership or corporation.
5. Notify the Collections Unit, United States Attorney's Office, before transferring any interest in property owned, directly or indirectly, including any interest held or owned under any other name, or entity, including a trust, partnership or corporation.
6. Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.

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AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 6 of 6

**RESTITUTION**

The defendant shall pay restitution in the amount of \$ 4,904,722.33 unto the United States of America.

Pay restitution in the amount of \$ 4,904,722.33 to the IRS through the Clerk, U. S. District Court. Payment of restitution shall be forthwith. During any period of incarceration, the defendant shall pay restitution through the Inmate Financial Responsibility Program at the rate of 50% of the defendant's income, or \$25.00 per quarter, whichever is greater. The defendant shall pay the restitution during his supervised release at the rate of \$1,000 per month. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the restitution judgment.

Until restitution has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

Interest will not be incurred on the amount in this restitution order.

AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

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DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 6 of 6

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Until restitution has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

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## AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

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DEFENDANT: MICHAEL TODD LUCAS (1)  
CASE NUMBER: 3:21-CR-00851-AJB

Judgment - Page 6 of 6

**RESTITUTION**

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Until restitution has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

Interest will not be incurred on the amount in this restitution order.

1 James D. Henderson, Jr.

2 **THE LAW OFFICES OF JAMES D. HENDERSON, JR.**

2530 Wilshire Blvd., Suite 210

3 Santa Monica, CA 90403

4 Tel: (310) 264-1898

[jdhjunior@gmail.com](mailto:jdhjunior@gmail.com)

5 Attorney for Defendant

6 MICHAEL T. LUCAS

7

8 **IN THE UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MICHAEL T. LUCAS,

15 Defendant.

16 **Case No. 3:21-cr-00851-AJB**

17 Hon. Anthony J. Battaglia

18 **DEFENDANT MICHAEL T. LUCAS'**  
**MOTION TO MODIFY TERMS OF**  
**SUPERVISED RELEASE;**  
**DECLARATION OF JAMES D.**  
**HENDERSON, JR. IN SUPPORT**  
**THEREOF**

19 **[NO HEARING REQUESTED]**

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23 NOW COMES the Defendant, Michael T. Lucas, by and though his counsel,

24 James D. Henderson, Jr., and files this Motion to Modify the terms of his Supervised

25 Release. Specifically, Mr. Lucas seeks to travel to Seoul, South Korea for approximately

26 six days on behalf of the company for which his is a consultant, Brand Engagement

27 Network, Inc. Undersigned counsel believes good cause exists because the modification

28 will assist with Mr. Lucas' employment and will facilitate additional repayment of Mr.

1 Lucas' restitution obligations to the Government. The Special Assistant United States  
2 Attorney on this matter, Charles O'Reilly, has stated that the U.S. Attorney's Office  
3 "will take no position" with regard to the relief requested herein, and John Moore, Mr.  
4 Lucas' probation officer, has also informed counsel that he will "defer to the court".  
5 Declaration of James D. Henderson, Jr., ¶ 2, attached hereto. No hearing date is  
6 requested.

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8       **1. GOOD CAUSE EXISTS TO MODIFY THE TERMS OF MR. LUCAS'**  
9       **SUPERVISED RELEASE BECAUSE TRAVEL TO SOUTH KOREA**  
10      **WILL ASSIST WITH REPAYMENT OF MR. LUCAS' RESTITUTION.**

11      On February 10, 2022, this Court sentenced Mr. Lucas to 18 months following his  
12 guilty plea to a failure to pay federal employment taxes in violation of 26 U.S.C. §7202.  
13 The Court also ordered that Mr. Lucas pay restitution to the government in the amount  
14 of \$4,904,722.33. Pursuant to an earlier *Ex Parte* Application, on March 29, 2022 this  
15 Court issued an order continuing Mr. Lucas' reporting date to May 23, 2022, and  
16 thereafter continued his reporting date until July 5, 2022 to allow Mr. Lucas to undergo  
17 hernia surgery.

18      Mr. Lucas was released to home confinement on February 2, 2023, and thereafter  
19 to supervised release on June 1, 2023. Since his February release, Mr. Lucas has  
20 continued to work, primarily via telephone and virtual meetings, although he has made  
21 several trips following requests made to and approval from the probation office. He has  
22 complied in full with the terms of his supervised release.

23      The company for whom Mr. Lucas works as a strategic advisor—Brand  
24 Engagement Network, Inc., ("BEN")—recently acquired a South Korean company (DM  
25 Lab Co., Ltd.).<sup>1</sup> The South Korean BEN team works on product development and  
26 research for BEN's main product, a human-like Artificial Intelligence avatar. Given that  
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28      <sup>1</sup> Undersigned Counsel is personally aware of BEN's activities because he is director as  
well as corporate counsel for the company. Declaration of James D. Henderson Jr., ¶ 4.

1 BEN has recently agreed to a merger with a public company as noted in an October 17,  
2 2023 Form S-4 filing with the SEC, development and roll-out of the AI avatar is crucial  
3 for BEN and its future. Because of that, BEN's corporate officers (including undersigned  
4 counsel) and development team will be in Seoul, South Korea at the BEN offices from  
5 December 12 through December 16 to engage in meetings and assist in the devolvement  
6 and planning for the company for the upcoming year. Henderson Decl., ¶ 3.

7 Mr. Lucas was the co-founder of BEN in 2018 and remains an important part of the  
8 company because of his vision and expertise. Undersigned counsel, as a Board Member  
9 of BEN, believes Mr. Lucas' presence in South Korea will ultimately benefit all of  
10 BEN's shareholders. In short, BEN needs him in South Korea. Henderson Decl., ¶ 5.

11 As this Court knows, Mr. Lucas owes a significant amount in restitution, and  
12 undersigned counsel and Mr. Lucas counsel believe this modification to the terms of  
13 supervised release with help facilitate repayment, at least in part, of that restitution  
14 figure, as Mr. Lucas is a significant shareholder in BEN.

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## **2. CONCLUSION**

17 Based on the foregoing, and good cause showing, Defendant Michael T. Lucas  
18 respectfully requests that this Court issue an order modifying the terms of his supervised  
19 release to allow Mr. Lucas to travel to Seoul, South Korea from December 11 through  
20 December 17, 2023.

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22 DATED: October 31, 2023

**THE LAW OFFICES OF JAMES D.  
HENDERSON, JR.**

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By: /s/James D. Henderson, Jr.  
JAMES D. HENDERSON, JR.  
Attorney for Defendant  
MICHAEL T. LUCAS

**DECLARATION OF JAMES D. HENDERSON, JR.**

I, James D. Henderson, Jr., hereby declare as follows:

1. I am an attorney licensed to practice in the State of California as well as the Southern District of California. I am the attorney for the Defendant, Michael T. Lucas. I am making this declaration based on my own personal knowledge, and if asked to testify thereto, I could and would do so competently.
  2. I informed SAUSA Charles O'Reilly of the relief sought herein, and on October 31, 2023, Mr. O'Reilly informed me via email that the office "will take no position" on the matter. On that same date, John Moore of the United States Probation Office in San Diego also informed me that he would "defer to the Court" regarding the relief sought herein.
  3. In addition to his other employment with Genuine Lifetime, LLC, Mr. Lucas currently works as a strategic advisor (and is a shareholder of) Brand Engagement Network, Inc. ("BEN"). Mr. Lucas was the co-founder of BEN in 2018. Pursuant to a Form S-4 filed with the SEC on October 17, 2023, BEN will likely be going public on NASDAQ in the first quarter of 2024. Earlier in 2023, BEN acquired a South Korean company, DM Lab Co., Ltd., which company undertakes the research and product development of BEN's primary product—a human-like Artificial Intelligence avatar.
  4. I am personally aware of these facts because I am a member of the Board of Directors of BEN as well as its corporate counsel, and I was actively engaged in the acquisition of DM Lab Co.
  5. Because of the rapidly approaching public offering in BEN, BEN and its officers believe the planning and product development for 2024 is of particular import. Mr. Lucas was instrumental in targeting DM Lab Co. as a target for acquisition by BEN and is extremely well-versed in the avatar technology and its potential business applications. Because of these facts, I believe it is crucial for BEN to have Mr.

1           Lucas in Seoul at the 2024 strategic planning sessions from December 12 through  
2           December 16. As a director in BEN, I will be there as well.

- 3           6. Because the strategic planning sessions will be held from December 12 through  
4           December 16, Ms. Lucas—if permitted by this Court—would fly to Seoul on  
5           December 11 and return on December 17.
- 6           7. I believe good cause exists for the relief requested because it will facilitate further  
7           payment of restitution by Mr. Lucas to the Government.

8           I swear under penalty of perjury under the laws of the United States that the  
9           foregoing is true and correct.

10           So sworn this 31<sup>st</sup> day of October, 2023 in Santa Monica, California.

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12           */s/James D. Henderson, Jr.*  
13           JAMES D. HENDERSON, JR.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 1, 2023, I electronically transmitted the document entitled **DEFENDANT MICHAEL T. LUCAS' MOTION TO MODIFY TERMS OF SUPERVISED RELEASE; DECLARATION OF JAMES D. HENDERSON, JR. IN SUPPORT THEREOF** to the Clerk of Court using the ECF system for filing as well as transmittal and service to the ECF registrants on file in this matter.

/s/ James D. Henderson, Jr.  
JAMES D. HENDERSON, JR.

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**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

9  
10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 MICHAEL T. LUCAS,

14 Defendant.

**Case No. 3:21-cr-00851-AJB**

Hon. Anthony J. Battaglia

**ORDER MODIFYING TERMS OF  
SUPERVISED RELEASE**

16 Having reviewed the unopposed Motion to Modify the Terms of Supervised  
17 Release of Defendant Michael T. Lucas and GOOD CAUSE SHOWING, the terms  
18 of Mr. Lucas' supervised release are hereby modified to allow Mr. Lucas to travel  
19 to Seoul, South Korea, from December 11, 2023 through December 17, 2023. Mr.  
20 Lucas is to provide, as soon as possible, the itinerary for his trip to his probation  
21 officer, John Moore, and shall notify Mr. Moore within 24 hours upon his return to  
22 the United States.

23 IT IS SO ORDERED.

24 Dated: November 1, 2023

  
25 Hon. Anthony J. Battaglia  
26 United States District Judge  
27  
28

1 James D. Henderson, Jr.

2 **THE LAW OFFICES OF JAMES D. HENDERSON, JR.**

2530 Wilshire Blvd., Suite 210

3 Santa Monica, CA 90403

4 Tel: (310) 264-1898

[jdhjunior@gmail.com](mailto:jdhjunior@gmail.com)

5 Attorney for Defendant

6 MICHAEL T. LUCAS

7

8 **IN THE UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MICHAEL T. LUCAS,

15 Defendant.

16 **Case No. 3:21-cr-00851-AJB**

17 Hon. Anthony J. Battaglia

18 **DEFENDANT MICHAEL T. LUCAS'**  
**MOTION TO MODIFY TERMS OF**  
**SUPERVISED RELEASE;**  
**DECLARATION OF JAMES D.**  
**HENDERSON, JR. IN SUPPORT**  
**THEREOF**

19 **[NO HEARING REQUESTED]**

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23 NOW COMES the Defendant, Michael T. Lucas, by and though his counsel,

24 James D. Henderson, Jr., and files this Motion to Modify the terms of his Supervised

25 Release. Specifically, Mr. Lucas seeks to travel to Australia and New Zealand with his

26 immediate family to see relatives in those countries for the Christmas and New Year

27 holidays. The length of stay, including 3 days of travel, would be approximately 17 days.

28 Undersigned counsel believes good cause exists because the modification is the first

1 vacation with his entire family to see relatives since prior to the pandemic in early 2020.  
2 Moreover, Mr. Lucas has been in full compliance with the terms of his supervised  
3 release on February 2, 2023.

4 More specifically, Mr. Lucas seeks to travel with immediate family from Los  
5 Angeles on December 17, 2024 and arrive in Australia on December 19, 2024 to meet  
6 with his spouse and other relatives celebrating the 80<sup>th</sup> birthday of the grandmother. Mr.  
7 Lucas' spouse, a New Zealand Citizen and Permanent Resident of the United States, as  
8 well as Mr. Lucas' sons, Dylan Lucas, Garrett Lucas, and Blake Lucas, will be with Mr.  
9 Lucas for the Christmas holiday period in Australia and its territory (Norfolk Island),  
10 and then travel on December 26 to New Zealand to meet his father-in-law and other  
11 family members who are residents of New Zealand from December 26 through January  
12 1, prior to returning back to the United States on January 2.

13 The Special Assistant United States Attorney on this matter, Charles O'Reilly, has  
14 stated that the U.S. Attorney's Office "takes no position" with regard to the relief  
15 requested herein, and Lissa Williams, Mr. Lucas' probation officer, has also informed  
16 counsel that she will "defer to the court" but that she would be happy to write a letter to  
17 the Court in support of the travel request. Declaration of James D. Henderson, Jr., ¶¶ 2 &  
18 3, attached hereto. No hearing date is requested.

19

20 **1. GOOD CAUSE EXISTS TO MODIFY THE TERMS OF MR. LUCAS'**  
21 **SUPERVISED RELEASE BECAUSE TRAVEL TO SOUTH KOREA**  
22 **WILL ASSIST WITH REPAYMENT OF MR. LUCAS' RESTITUTION.**

23 On February 10, 2022, this Court sentenced Mr. Lucas to 18 months following his  
24 guilty plea to a failure to pay federal employment taxes in violation of 26 U.S.C. §7202.  
25 The Court also ordered that Mr. Lucas pay restitution to the government in the amount  
26 of \$4,904,722.33. Pursuant to an earlier *Ex Parte* Application, on March 29, 2022 this  
27 Court issued an order continuing Mr. Lucas' reporting date to May 23, 2022, and  
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1 thereafter continued his reporting date until July 5, 2022 to allow Mr. Lucas to undergo  
2 hernia surgery.

3 Mr. Lucas was released to home confinement on February 2, 2023, and thereafter  
4 to supervised release on June 1, 2023. Since his February release, Mr. Lucas has  
5 continued to work, traveled to Seoul, South Korea with permission by this Court in  
6 December of 2023, and abided by the travel permission timeline, returning to the United  
7 States without incident. On January 12, 2024, Mr. Lucas was notified in writing that his  
8 case was transferred to the Administrative Caseload due to “positive adjustment thus  
9 far,” as stated in the letter by the probation officer at the time, John Moore. Henderson  
10 Decl., ¶3. As noted, Mr. Lucas has complied, and continues to comply, in full with the  
11 terms of his supervised release.

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## **2. CONCLUSION**

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Based on the foregoing, and good cause showing, Defendant Michael T. Lucas  
respectfully requests that this Court issue an order modifying the terms of his supervised  
release to allow Mr. Lucas to travel to Australia from December 17 through December  
26, 2024, and then to New Zealand from December 26, 2024 to January 1, 2025, and  
thereafter return to the United States on January 2, 2025.

DATED: December 5, 2024

**THE LAW OFFICES OF JAMES D.  
HENDERSON, JR.**

By: /s/James D. Henderson, Jr.

JAMES D. HENDERSON, JR.  
Attorney for Defendant  
MICHAEL T. LUCAS

**DECLARATION OF JAMES D. HENDERSON, JR.**

I, James D. Henderson, Jr., hereby declare as follows:

1. I am an attorney licensed to practice in the State of California as well as the Southern District of California. I am the attorney for the Defendant, Michael T. Lucas. I am making this declaration based on my own personal knowledge, and if asked to testify thereto, I could and would do so competently.
  2. I informed SAUSA Charles O'Reilly of the relief sought herein, and on December 5, 2024, Mr. O'Reilly informed me via email that, as with Mr. Lucas' prior request for travel, that the office "takes no position" on the matter. AUSA O'Reilly did note, however, that Lissa Williams, the United States Probation Officer supervising Mr. Lucas would need a detailed itinerary for the trip. Undersigned Counsel informed Mr. O'Reilly that Mr. Lucas would provide an itinerary as soon as possible.
  3. USPO Williams wrote an email on November 12, 2024 stating that she would be "happy to write the court a letter for permission for international travel or your attorney can do it". Undersigned Counsel believes it also worth noting that on January 12, 2024, Mr. Lucas was notified in writing by the prior USPO handling his case, John Moore, that it was being transferred to the Administrative Caseload due to Mr. Lucas' "positive adjustment thus far".
  4. Mr. Lucas has not seen his family members in Australia and New Zealand since 2019 due to the Covid outbreak in 2020 and Mr. Lucas' sentence imposed on February 10, 2022. If the Court permits, Mr. Lucas would travel with his spouse, Tyler Luck, a New Zealand Citizen and a permanent resident of the United States, from Los Angeles on December 17, 2024 and arrive in Australia on December 19, 2024 to meet other relatives celebrating the 80<sup>th</sup> birthday of the Mr. Luck's grandmother. Mr. Luck, as well as Mr. Lucas' sons, Dylan Lucas, Garrett Lucas, and Blake Lucas, will be with Mr. Lucas for the Christmas holiday period in Australia and its territory (Norfolk Island), and then travel to New Zealand on

1 December 26 to meet his father-in-law and other family members, who are  
2 residents of New Zealand, from December 26 through January 1, prior to returning  
3 back to the United States on January 2.

4 5. I believe good cause exists for the relief requested because Mr. Lucas has not seen  
5 various family members since prior to the pandemic, and because Mr. Lucas has  
6 been in full compliance with the terms of his supervised release.

7 I swear under penalty of perjury under the laws of the United States that the  
8 foregoing is true and correct.

9 So sworn this 5<sup>th</sup> day of December, 2024 in Santa Monica, California.

10  
11 /s/James D. Henderson, Jr.  
12 JAMES D. HENDERSON, JR.  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 5, 2024, I electronically transmitted the document entitled **DEFENDANT MICHAEL T. LUCAS' MOTION TO MODIFY TERMS OF SUPERVISED RELEASE; DECLARATION OF JAMES D. HENDERSON, JR. IN SUPPORT THEREOF** to the Clerk of Court using the ECF system for filing as well as transmittal and service to the ECF registrants on file in this matter.

/s/ James D. Henderson, Jr.  
JAMES D. HENDERSON, JR.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA.

Plaintiff,

V.

MICHAEL T. LUCAS,

Defendant.

Case No. 3:21-cr-00851-AJB

Hon. Anthony J. Battaglia

## **ORDER MODIFYING TERMS OF SUPERVISED RELEASE**

Having reviewed the unopposed Motion to Modify the Terms of Supervised Release of Defendant Michael T. Lucas and GOOD CAUSE SHOWING, the terms of Mr. Lucas' supervised release are hereby modified to allow Mr. Lucas to travel family from Los Angeles on December 17, 2024 to Sydney, Australia and its territory (Norfolk Island), and then travel on December 26, 2024 to New Zealand through January 1, 2025, prior to returning back to the United States on January 2, 2025.

Mr. Lucas is to provide, as soon as possible, the itinerary for his trip to his

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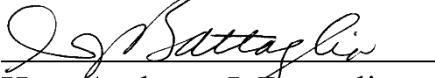
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1 probation officer, Lissa Williams, and shall notify Ms. Williams within 24 hours  
2 upon his return to the United States.

3 **IT IS SO ORDERED.**

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5 Dated: December 5, 2024

  
6 Hon. Anthony J. Battaglia  
7 United States District Judge

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