

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

MICHAEL TODD LUCAS,

Defendant.

Case No. 21-cr-851-AJB

I N F O R M A T I O N

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 DISTRICT OF CALIFORNIA
PNC DEF

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.
- (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: allow travel for 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.

3/31/21

Electronically Sent to USMS

BERNARD G. SKOMAL

UNITED STATES MAGISTRATE JUDGE

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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9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MICHAEL TODD LUCAS,

16 Defendant.

Case No. 21 CR 851-AJB

PLEA AGREEMENT

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

22 I

23 THE PLEA

24 Defendant agrees to waive Indictment and plead guilty to an Information charging
25 Defendant with:

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

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

Plea Agreement

Def. Initials 

- CR -

II

NATURE OF THE OFFENSE

A. 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.

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

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

27 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 any 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.

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Plea Agreement

V

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

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

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

VI

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

Defendant represents that:

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

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

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

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

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6 VII

7 **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.

12 VIII

13 **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.

24 IX

25 **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
28

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

X

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

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

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

B. ACCEPTANCE OF RESPONSIBILITY

Despite paragraph A above, the Government need not recommend an adjustment for Acceptance of Responsibility if Defendant engages in conduct inconsistent with acceptance 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. Falsely 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."

4 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.

9 3. Restitution

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

12 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.

17 XI

18 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
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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
28

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.

XV

DEFENDANT SATISFIED WITH COUNSEL

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

ROBERT S. BREWER, JR.
United States Attorney

4 January 2021
DATED


Stephen K. Moulton
Charles A. O'Reilly
Special Assistant U.S. Attorneys

12-15-2020
DATED


Charles G. La Bella
Defense Counsel

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

12-17-2020
DATED


Michael Todd Lucas
Defendant

Approved By:


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

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

Restitution Addendum

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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

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

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

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

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

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.

25 14. The United States may run credit and other financial reports on Defendant
26 using public and non-public databases and share such information with the Court and the
27 U.S. Probation Office. Defendant also authorizes the Internal Revenue Service to transmit
28

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.

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Restitution Addendum

1 18. Defendant shall immediately notify the Forfeiture and Financial Litigation
2 Section of the United States Attorney's Office of any material change in Defendant's
3 financial condition.

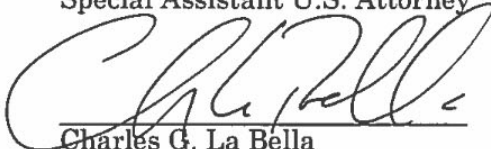
4 19. Defendant understands that restitution is delinquent until paid in full. Until
5 restitution is paid in full, Defendant will be referred to the Treasury Offset Program so that
6 any federal payment or transfer of returned property to Defendant will be offset and applied
7 to pay Defendant's unpaid restitution.

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

10 3 March 2021
11 DATED


12 Stephen K. Moulton
13 Charles A. O'Reilly
14 Special Assistant U.S. Attorney

15 2-25-21
16 DATED



17 Charles G. La Bella
18 Defense Counsel

19 2-19-2021
20 DATED


21 Michael Todd Lucas
22 Defendant

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Restitution Addendum

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Def. Initials 
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Email: charles.a.o'reilly@usdoj.gov
Attorneys for United States of America

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL TODD LUCAS,

Defendant.

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

**UNITED STATES' SENTENCING
MEMORANDUM**

Date: February 7, 2022

Time: 9:00 a.m.

Courtroom: 4A

THE HON. ANTHONY J. BATTALIA

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

I. INTRODUCTION

During the years 2008 through 2017, Defendant Michael Todd Lucas controlled TradeMotion, Inc. (formerly known as Trademotion, LLC) and other business entities including i3 Brands, Inc., Intelligentz Automotive Corporation and Intelligentz 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*
18 *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).
 28

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
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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.'" *United States v. Livesay*, 525 F.3d 1081, 1093–94 (11th Cir. 2008) (quoting *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006)). In particular, in enacting Section 3553
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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

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

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

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

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

Several courts, including this one, recently imposed sentences of imprisonment for
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

C. Sentencing Recommendation

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

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

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

D. Restitution

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

In accordance with the Plea Agreement, the Defendant has agreed to pay restitution in the amount of \$4,904,722.33, an amount that will be updated as of the date of sentencing to include any payments Defendant has made as well as additional penalties and interest. The United States will provide the Court with a proposed restitution order with an updated 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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8 UNITED STATES DISTRICT COURT
9 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

Judge: Hon. Anthony J. Battaglia
Dept.: 4A
Date: February 10, 2022
Time: 10:00 A.M.

15
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
28

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.¹ 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 ¹ 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

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.”

- November 1, 2021, Letter to Hon. Anthony J. Battaglia from Shawn Lucas, Michael’s younger brother, describing their childhood, their father’s murder, and their family’s relationship with law enforcement, due to their father’s murder. The letter also describes Michael as someone who would essentially provide the shirt off his back to help others:

- “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. . . 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.”

- November 3, 2021 Letter to Hon. Anthony J. Battaglia from Jon Leibowitz, a former Chair of the Federal Trade Commission and current antitrust lawyer practicing in Washington, D.C., regarding Michael’s assistance with a major antitrust investigation currently being conducted by the Federal Trade Commission:

- “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.”

- November 7, 2021, Letter to Hon. Anthony J. Battaglia from Venkata Ramana Pinnam, a former employee of Michael, describing him as a responsible and understanding employer:

- 1 ○ “There were times when we had no money to pay employees, Michael
2 was always thinking about how to pay the employees and he risked
3 everything he got to take care of the employees and I've witnessed this
4 during all my tenures with Michael. Michael has been very sensitive to
5 employee needs and their personal situations.”
- 6 • November 11, 2021, Letter to Hon. Anthony J. Battaglia from Janell Riley, a
7 former employee of Michael, describing him as someone who always put his
8 business ahead of his personal needs:
- 9 ○ “Michael is and always has been an intelligent, driven and, most
10 importantly, a caring individual and businessman. He continually
11 regarded the business ahead of any personal gain and frequently, and
12 possibly to his detriment, made sure that employee needs, including
13 payroll, were always placed in the forefront of his obligations. In fact, he
14 often paid the salaries of his employees before taking his own salary.”
- 15 • November 16, 2021, Letter to Hon. Anthony J. Battaglia from John Lucas,
16 Michael’s nephew, describing Michael as the man who gave him life and hope:
- 17 ○ “Michael went to great lengths to understand why I wasn’t able to stay
18 sober. . . Despite criticism from others, he stood by my side and continued
19 loving me as if I was his own. . . He not only goes above and beyond for
20 me but for anyone every chance he gets, seemingly without thought or
21 hesitation. . . He’s an amazing mentor to many and is certainly my best
22 friend.”
- 23 • November 16, 2021, Letter to Hon. Anthony J. Battaglia from Kimberly Church,
24 stating that her son would likely not be alive, if it were not for Michael:
- 25 ○ “Michael always looks to brighten other people's day. Most recently,
26 Michael has helped my son John Lucas recovers from a long battle with
27 drug addiction. The drug addiction almost took his life multiple times and
28 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:
28

- 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

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

Not once, however, did Michael fraudulently report or fail to report the amount he and his company actually owed the IRS. In fact, the IRS knew precisely how much Michael failed to pay over in employment taxes because Michael told them the amount, every quarter, every year, for seven years. PSR ¶ 6. Even during the quarters the government uses to compute his criminal tax loss, he made payments in NINE 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

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

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

During this period, the IRS also mistakenly put liens on entities that were unrelated to the tax due and owing. PSR ¶ 8.² While the liens were not warranted and were later removed by the IRS, once the error was acknowledged, the fact of the imposition of these liens caused financial disaster within his business model and made it even more difficult for Michael to pay the tax debt. *Id.* Additionally, in March 2016, Michael sought to satisfy his employee tax obligations through an Offer in Compromise, which he submitted to the IRS to satisfy the entire amount of the payroll taxes withheld, excluding penalties and interest. However, the IRS appeals office ultimately rejected the offer in June 2017. Despite his efforts to be honest with the IRS about his outstanding obligations and to make whatever payment he could afford, the IRS started a criminal investigation. According to the government, the IRS began this investigation because Michael "didn't make good" on all of his outstanding debts to the IRS. PSR ¶ 14. Notably, this investigation appears to have started during the same year that Michael made a \$700,000 payment to the IRS. PSR

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

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

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

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

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

The government recommends that this Court send Michael to prison for two years. In support of its motion, the government cites the 30-month sentence a defendant recently received in the Southern District of California for a tax crime. *See United States v. Sreckovic*, 21cr18. The government omits, however, that the 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.

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

March 30, 1995

Michael Lucas
417 H Uluniu Street
Kailu, HI 96734

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



OCEANA

Protecting the
World's Oceans

909 Third Avenue, 31st 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 16th. 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



SALK INSTITUTE
FOR BIOLOGICAL STUDIES

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 20th 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,

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

-----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 would like to 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 back-grounds 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,

Julia

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 31st, 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.

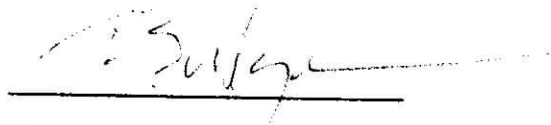
I can't imagine the stresses and pressures of life as an entrepreneur but Michael has always taken the challenges in his stride and seems to thrive in the environment. He has given his all to his employees and shareholders for the better part of two decades. I've often joked with him that "he's the only 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,

A handwritten signature in dark ink, appearing to read "T. Budgen", is written over a horizontal line.

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 Sherriff 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 3rd, 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.

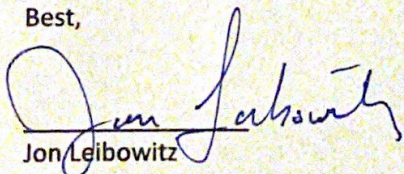
Mr. Lucas came forward with little to gain personally and much to lose, especially if the alleged conspirators became aware of his courageous activity.

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.

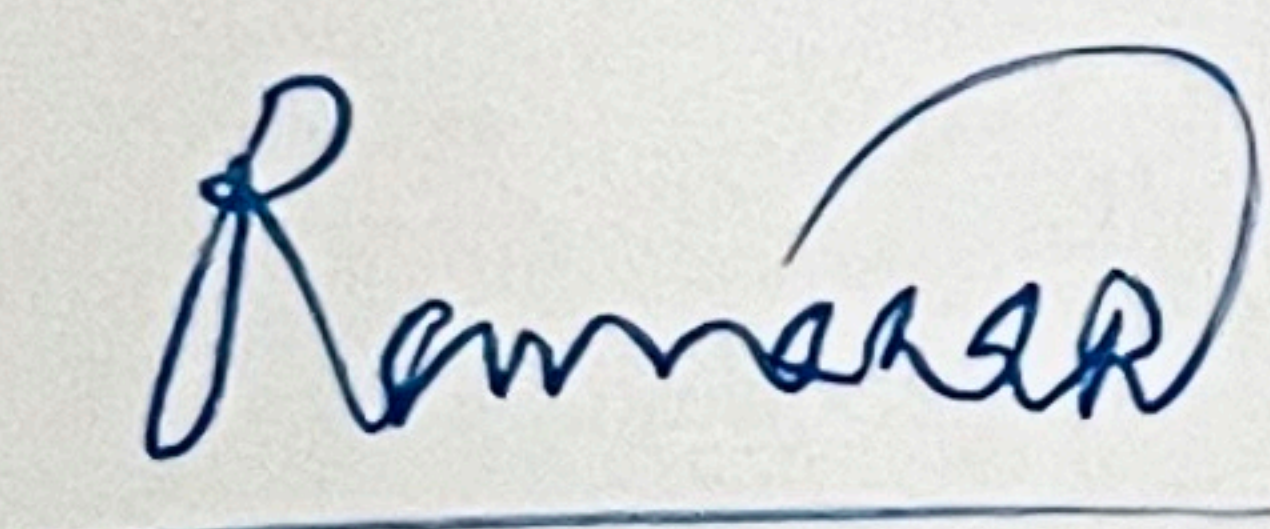
Michael pitched the idea of "MANUFACTURER PROMOTION AUTOMATION SYSTEM AND METHODS" and I did the technical design, that's part of my work, but he offered me stock incentive and named me as a co-inventor. He did not have to do that, but he was selfless and encouraged the talent. Since then, there have 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

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 cursive script that reads "John Lucas". The signature is written in dark ink and is positioned below the "Thank you" text.

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

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Chandler, Az 85224

November 16, 2021

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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.

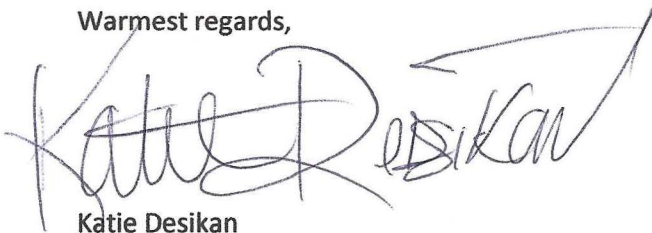
Michael has been such a tremendous emotional support to me over the years as well. I have dealt with so many personal emotional issues over the years, and I always felt I could come to him for compassion, understanding, encouragement, optimism, and a good laugh. For instance, I married later in life, 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,

A handwritten signature in black ink, appearing to read "Katie Desikan". The signature is stylized with a large, sweeping "K" and a long, horizontal stroke extending to the right. Below the signature, the name "Katie Desikan" is printed in a simple, black, sans-serif font.

Katie Desikan

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

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL TODD LUCAS,

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

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

I. INTRODUCTION

No one contests that Mr. Lucas is guilty of a tax crime, and Mr. Lucas is not charged 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, 2021.¹ 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 ¹ 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).
 28

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
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):

Title and Section / Nature of Offense

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

Count

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

-

☐ JVT 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 (CASD 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

3:21-CR-00851-AJB

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

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 (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.

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

7 Attorney for Defendant
8 MICHAEL T. LUCAS

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

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MICHAEL T. LUCAS,

15 Defendant.

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

Hon. Anthony J. Battaglia

NOTICE OF APPEARANCE

16
17
18 PLEASE TAKE NOTICE that the undersigned counsel hereby files his
19 appearance on behalf of the Defendant, Michael T. Lucas, in the above-captioned
20 proceeding.
21

22 DATED: March 28, 2022

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

23
24
25
26 By: /s/James D. Henderson, Jr.
JAMES D. HENDERSON, JR.
Attorney for Defendant
MICHAEL T. LUCAS
27
28

1 **CERTIFICATE OF SERVICE**

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

6
7
8 /s/ James D. Henderson, Jr.

9 JAMES D. HENDERSON, JR.
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1 **IN THE UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF CALIFORNIA**

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 MICHAEL T. LUCAS,

8 Defendant.
9

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


Hon. Anthony J. Battaglia

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

10
11 Having reviewed the unopposed *Ex Parte* Application of Defendant Michael
12 T. Lucas and GOOD CAUSE SHOWING, the original reporting date of Defendant
13 Lucas of 12:00 p.m. on April 8, 2022 is hereby extended until 12:00 p.m. on
14 May 23, 2022. Bond Exoneration Hearing is reset for 5/31/2022 at 2:00 PM.
15 There will be no further extensions.

16 IT SO ORDERED.

17 Dated: March 29, 2022

18 
19 Hon. Anthony J. Battaglia
20 United States District Judge
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James D. Henderson, Jr.
THE LAW OFFICES OF JAMES D. HENDERSON, JR.
2530 Wilshire Blvd., Suite 210
Santa Monica, CA 90403
Tel: (310) 264-1898
jdhjunior@gmail.com

Attorney for Defendant
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 through his counsel, James D. Henderson, Jr., and files this *Ex Parte* Application to Continue his Reporting Date approximately six weeks from 12:00 p.m. May 23, 2022 until 12:00 p.m. on July 5, 2022. Undersigned counsel believes good cause exists because Mr. Lucas requires 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 not positions regarding the application and the relief sought herein.
 11 Henderson Decl., ¶ 4.

12
 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.¹

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
 26

27
 28 ¹ 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
27
28

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.

10
11 **2. CONCLUSION**

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

16
17 DATED: May 23, 2022

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

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20 By: /s/James D. Henderson, Jr.
21 JAMES D. HENDERSON, JR.
22 Attorney for Defendant
23 MICHAEL T. LUCAS
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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 a 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 23rd 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 23rd day of May, 2022 in Lompoc, California.

/s/Michael T. Lucas
MICHAEL T. LUCAS

1
2 **CERTIFICATE OF SERVICE**

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

10 /s/ James D. Henderson, Jr.

11 JAMES D. HENDERSON, JR.
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1 **IN THE UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF CALIFORNIA**

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 MICHAEL T. LUCAS,

8 Defendant.
9

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


Hon. Anthony J. Battaglia

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

10
11 Having reviewed the unopposed *Ex Parte* Application of Defendant Michael
12 T. Lucas and GOOD CAUSE SHOWING due to Defendant Lucas' medical
13 emergency, the scheduled reporting date of Defendant Lucas of 12:00 p.m. on May
14 23, 2022 is hereby extended until 12:00 p.m. on July 5, 2022. Bond Exoneration
15 Hearing previously set for May 31, 2022 is reset for July 11, 2022 at 2:00 PM.

16
17 IT SO ORDERED.

18 Dated: May 24, 2022

19 
20 Hon. Anthony J. Battaglia
21 United States District Judge
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AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

5/5
4/18/22

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)

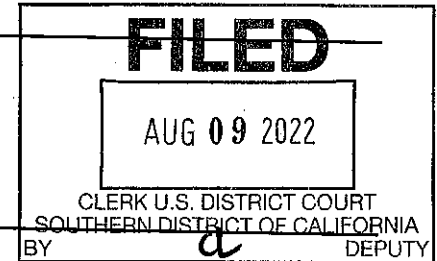
Case Number: 3:21-CR-00851-AJB

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):

Title and Section / Nature of Offense

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

Count
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☐ JVT 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 (CASD 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

7.5.22

Lompoc

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

3:21-CR-00851-AJB

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 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 (CASD 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.

3:21-CR-00851-AJB

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 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 (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 (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

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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

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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.**
3 2530 Wilshire Blvd., Suite 210
4 Santa Monica, CA 90403
5 Tel: (310) 264-1898
6 jdhjunior@gmail.com

7 Attorney for Defendant
8 MICHAEL T. LUCAS

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

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MICHAEL T. LUCAS,

15 Defendant.

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

Hon. Anthony J. Battaglia

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

[NO HEARING REQUESTED]

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23 NOW COMES the Defendant, Michael T. Lucas, by and through 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 he 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.

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

1. GOOD CAUSE EXISTS TO MODIFY THE TERMS OF MR. LUCAS’ SUPERVISED RELEASE BECAUSE TRAVEL TO SOUTH KOREA WILL ASSIST WITH REPAYMENT OF MR. LUCAS’ RESTITUTION.

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

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

The company for whom Mr. Lucas works as a strategic advisor—Brand Engagement Network, Inc., (“BEN”)—recently acquired a South Korean company (DM Lab Co., Ltd.).¹ The South Korean BEN team works on product development and research for BEN’s main product, a human-like Artificial Intelligence avatar. Given that

¹ 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 devolvment
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.

15
16 **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.

21
22 DATED: October 31, 2023

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

23
24
25 By: /s/James D. Henderson, Jr.

JAMES D. HENDERSON, JR.

Attorney for Defendant

MICHAEL T. LUCAS
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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 31st day of October, 2023 in Santa Monica, California.

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

3 I HEREBY CERTIFY that on November 1, 2023, I electronically transmitted
4 the document entitled **DEFENDANT MICHAEL T. LUCAS' MOTION TO**
5 **MODIFY TERMS OF SUPERVISED RELEASE; DECLARATION OF JAMES**
6 **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.

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10 /s/ James D. Henderson, Jr.

11 JAMES D. HENDERSON, JR.
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7 **IN THE UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 MICHAEL T. LUCAS,

14 Defendant.
15

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


Hon. Anthony J. Battaglia

**ORDER MODIFYING TERMS OF
SUPERVISED RELEASE**

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

24 IT IS SO ORDERED.

25 Dated: November 1, 2023

26 
27 Hon. Anthony J. Battaglia
28 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

7 Attorney for Defendant
8 MICHAEL T. LUCAS

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

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MICHAEL T. LUCAS,

15 Defendant.

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

Hon. Anthony J. Battaglia

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

[NO HEARING REQUESTED]

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23 NOW COMES the Defendant, Michael T. Lucas, by and through 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 80th 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
28

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.

12
13 **2. CONCLUSION**

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

19
20 DATED: December 5, 2024

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

21
22
23 By: /s/James D. Henderson, Jr.

24 JAMES D. HENDERSON, JR.
25 Attorney for Defendant
26 MICHAEL T. LUCAS
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28

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 80th 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 5th day of December, 2024 in Santa Monica, California.

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

3 I HEREBY CERTIFY that on December 5, 2024, I electronically transmitted
4 the document entitled **DEFENDANT MICHAEL T. LUCAS' MOTION TO**
5 **MODIFY TERMS OF SUPERVISED RELEASE; DECLARATION OF JAMES**
6 **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.

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10 /s/ James D. Henderson, Jr.

11 JAMES D. HENDERSON, JR.
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

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12 Plaintiff,

13 v.

14 MICHAEL T. LUCAS,

15 Defendant.
16

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

Hon. Anthony J. Battaglia

**ORDER MODIFYING TERMS OF
SUPERVISED RELEASE**

17 Having reviewed the unopposed Motion to Modify the Terms of Supervised
18 Release of Defendant Michael T. Lucas and GOOD CAUSE SHOWING, the terms
19 of Mr. Lucas' supervised release are hereby modified to allow Mr. Lucas to travel
20 family from Los Angeles on December 17, 2024 to Sydney, Australia and its
21 territory (Norfolk Island), and then travel on December 26, 2024 to New Zealand
22 through January 1, 2025, prior to returning back to the United States on January 2,
23 2025.

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

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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.**

4
5 Dated: December 5, 2024

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