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July 11, 2009

The Honorable Jon Stuart Scoles  
United States Magistrate Judge  
4200 C Street, S.E.  
Cedar Rapids, Iowa 52404

Re: *United States v. Keith Chapman*, CR 09-37-LRR

Dear Judge Scoles:

I am writing in regard to the Rule 11 hearing in the above entitled matter which is presently scheduled to be held on Friday, July 17, 2009, at 1:30 p.m., in Cedar Rapids.

The defendant has agreed to plead guilty to Counts 1 and 2 of the indictment, charging him with bankruptcy fraud, and will waive indictment and plead guilty to a one-count information, charging him with filing a false tax return.

### **INFORMATION**

Defendant has waived indictment as to the charging of filing a false tax return for the tax year 2003, and his written waiver has been filed. Defendant has not yet made an initial appearance on this charge.

### **CHARGES**

Counts 1 & 2 of the indictment each charge defendant with bankruptcy fraud, in violation of Title 18, United States Code, Section 152(3).

Count 1 of the information charges defendant with filing a false tax return for the tax year 2003, in violation of Title 26, United States Code, Section 7206(1).

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### **STATUTES**

Title 18, United States Code, Section 152(3), provides in pertinent part:

*A person who – . . . (3) knowing and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury . . . shall be fined under this title, imprisoned not more than 5 years, or both.*

Title 26, United States Code, Section 7206, provides, in pertinent part:

*Any person who – (1) Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter . . . shall be guilty of a felony . . .*

### **MAXIMUM PENALTIES**

Counts 1 and 2 of the Indictment, each of which charge defendant with bankruptcy fraud, are each punishable by up to five (5) years' imprisonment without the possibility of parole, a fine of up to \$250,000, or both; a mandatory special assessment of \$100; and a term of supervised release of not more than three (3) years.

Count 1 of the Criminal Information, charging defendant with filing a false tax return, is punishable by up to three (3) years' imprisonment without the possibility of parole, a fine of up to \$250,000, or both; a mandatory special assessment of \$100; and a term of supervised release of not more than one (1) year. In addition, 18 U.S.C. § 7206 imposes a mandatory obligation that defendant pay the costs of prosecution.

### **WAIVER OF INDICTMENT**

As part of the plea agreement (¶ 1), defendant has agreed to waive indictment as to the tax charge and proceed by Criminal Information as to that charge. In compliance with the plea agreement, the defendant has filed a written waiver of indictment. A copy of that waiver is attached hereto.

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## **ELEMENTS OF THE OFFENSES**

### **Bankruptcy Fraud Charges**

The crime of bankruptcy fraud in violation of Title 18, United States Code, Section 152(3), as charged in Counts 1 and 2 of the Indictment, each has four essential elements, which are:

*One*, on or about February 8, 2005, a bankruptcy case was pending in the United States Bankruptcy Court for the Northern District of Iowa, in which defendant was the debtor;

*Two*, defendant made a false or fraudulent statement regarding a matter material to the bankruptcy proceeding; and,

*Three*, the defendant knew the statement was false when it was made;

*Four*, the defendant did so with the intent to defraud.

See 18 U.S.C. § 152(3); Eight Circuit Pattern Jury Instruction 6.18.152B.

### **Filing a False Tax Return**

The crime of filing a false tax return in violation of Title 26, United States Code, Section 7206(1), as charged in Count 1 of the Criminal Information, has five essential elements, which are:

*One*, the defendant made and signed an individual income tax return, Form 1040, for the tax year 2003, that was false as to income;

*Two*, the return contained a written declaration that it was signed under the penalties of perjury;

*Three*, the defendant did not believe the return to be true and correct as to income;

*Four*, the defendant acted willfully; and

*Five*, the false matter in the income tax return was material.

See 26 U.S.C. § 7206(1); Eighth Circuit Pattern Jury Instruction 6.26.7206; *United States v. Miell*, CR 07-101-MWB (1/7/09) (Instruction No. 3).

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**FACTUAL BASIS FOR THE PLEA**

The plea agreement contains a factual basis sufficient for the plea. At paragraph 8, it provides:

Chapman Lumber Company, Inc. ("Chapman Lumber") was in the business of sawing, drying and processing hardwoods. Chapman Lumber was located near Hopkinton, Iowa, in the Northern District of Iowa. Chapman Lumber was a family-owned business started by defendant's father in 1954. Defendant took over the business in 1998. Defendant owned 98.5% of Chapman Lumber and, during all times relevant hereto, served as President of Chapman Lumber. In February 2005, Chapman Lumber employed 30 people.

Chapman Lumber maintained a line of credit with the Quad City Bank which, beginning February 29, 2002, totaled \$2.9 million. Chapman Lumber pledged as collateral for the line of credit, among other things, its log inventory and accounts receivables. Chapman Lumber maintained business accounts at Community Savings Bank and Quad City Bank.

On June 10, 1999, defendant opened a checking account at Wells Fargo Bank in Cedar Rapids, Iowa, in the Northern District of Iowa, in the name of Chapman Lumber (the "Wells Fargo account"). Defendant provided his Social Security number, however, instead of the Chapman Lumber's Employer Identification Number ("EIN"). Defendant opened the account with checks made payable to Chapman Lumber, constituting accounts receivable. The mailing address for the Wells Fargo account was Chapman Lumber's address in Hopkinton, Iowa. No one else was listed on the Wells Fargo account and defendant was the only signatory on the Wells Fargo account.

Defendant opened the mail at Chapman Lumber. Between June 10, 1999, and February 2005, defendant diverted some of the accounts receivable checks made payable to Chapman Lumber and deposited them into the Wells Fargo account. Defendant transferred funds from the Wells Fargo account into his personal bank account. Defendant also wrote checks on the Wells Fargo account to purchase items and services for his or others' benefit, and not for business purposes, such as a membership in a country club, jewelry, golf equipment, and clothing, among other items. From 1999 through February 2005, the government asserts defendant spent approximately \$469,464.22 of funds from the Wells Fargo account for his own personal benefit.

Defendant did not report on his tax returns the money he used from the Wells Fargo account for his own personal benefit. In the following years, defendant failed to report funds diverted through the Wells Fargo account to his own use, which therefore

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constituted unreported income. The government asserts the amount of unreported income is:

2002	\$ 96,959.19
2003	\$201,362.89
2004	<u>\$155,792.00</u>
Total:	<u>\$454,114.08</u>

The result of defendant's unreported income, based on the above figures, would result in additional tax due and owing as follows:

2002	\$ 28,896.56
2003	\$ 62,564.00
2004	<u>\$ 50,133.93</u>
Total:	<u>\$141,594.49</u>

Defendant's individual tax returns for 2002, 2003, and 2004 were prepared by defendant's certified public accountant, and filed electronically from the accountant's office. The accountant was not, at the time, aware of the Wells Fargo account. The returns were filed under penalty of perjury. Defendant knew did not believe at the time he filed his tax returns in 2002, 2003 and 2004 that they were correct and true in that defendant knew that he had not reported the funds from the Wells Fargo account that he used for his own personal benefit and knew, therefore, constituted taxable income. Defendant's personal tax returns for 2002, 2003 and 2004 were false in that they failed to include the income from the Wells Fargo account. Defendant willfully filed false tax returns, knowing they were false at the time he filed them.

On February 8, 2005, Chapman Lumber filed for Chapter 11 bankruptcy seeking reorganization. Defendant filed the petition in the United States Bankruptcy Court for the Northern District of Iowa, case number 05-00408. It was later converted to a Chapter 7 bankruptcy. Defendant signed and filed the bankruptcy petition on behalf of Chapman Lumber. Defendant did not disclose the Wells Fargo account in the schedules filed under oath with the bankruptcy petition.

On March 4, 2005, the United States Bankruptcy Court issued an order appointing a Chapter 11 Trustee and freezing the known bank accounts.

On March 9, 2005, the Chapter 11 Trustee notified the United States Post Office of the appointment and requested all Chapman Lumber mail be sent to him at his law firm address.

On March 12, 2005, defendant contacted Wells Fargo and requested it change the mailing address for the Wells Fargo account to his home address. Wells Fargo

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policy dictated that it send a notice to the customer's prior address acknowledging the change of address had been requested and advising of their intent to process the request. Wells Fargo sent such a notice to Chapman Lumber on March 12, 2005, which the Trustee received some time later. This was the first time the Trustee became aware of the Wells Fargo account.

On March 17, 2005, defendant closed the undisclosed Wells Fargo account. At the time, the government contends the account contained approximately \$700.

Defendant knowingly concealed the Wells Fargo account from the bankruptcy court, knowing that it was the property of the bankruptcy estate. Defendant concealed the Wells Fargo account with the intent to defraud the bankruptcy court and creditors.

**PLEA AGREEMENT**

Defendant intends to plead guilty pursuant to a written plea agreement. A copy of the plea agreement will be presented at the plea hearing.

I hope this information will be helpful to the Court for the plea taking.

Sincerely,

MATT M. DUMMERMUTH  
United States Attorney

By: 

C.J. WILLIAMS  
Assistant United States Attorney

cc: Ms. Jane Kelly, Esq.