

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DANIEL MATTHIAS KINCHELOE

VSB DOCKET NO.: 20-000-119103

CONSENT TO REVOCATION ORDER

On July 6, 2020, came DANIEL MATTHIAS KINCHELOE (hereinafter “Respondent”) and presented to the Disciplinary Board (hereinafter the “Board”) an Affidavit Declaring Consent to Revocation (hereinafter “Affidavit”) of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when allegations of Misconduct are pending, the nature of which are specifically set forth in the attached Affidavit, Respondent acknowledges that that the material facts upon which the allegations of Misconduct are pending are true.

The Board, having considered Respondent’s Affidavit, and Bar Counsel having no objection, accepts his Consent to Revocation.

Upon consideration whereof, it is therefore ordered that Daniel Matthias Kincheloe’s license to practice law in the courts of this Commonwealth be and the same hereby is revoked, and that the name of DANIEL MATTHIAS KINCHELOE be stricken from the Roll of Attorneys of this Commonwealth.

ENTERED THIS 6th DAY OF JULY, 2020

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney Digitally signed by Yvonne S. Gibney
Date: 2020.07.06 21:27:29 -04'00'

Yvonne S. Gibney
Chair

RECEIVED

Jul 6, 2020

**VIRGINIA STATE BAR
CLERK'S OFFICE**

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
DANIEK MATHIAS KINCHELOE**

VSB Docket No. 20-000-119103

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Daniel Mathias Kincheloe, (Respondent) after being duly sworn, states as follows:

1. That Respondent was licensed to practice law in the Commonwealth of Virginia on 16 December 2003;
2. That Respondent submits this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13-28;
3. That Respondent's consent to revocation is freely and voluntarily rendered, that Respondent is not being subjected to coercion or duress, and that Respondent is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia;
4. That on 19 June 2020, Respondent pled guilty in the United States District Court for the Western District of Virginia, Charlottesville Division, to one count of Transmission of Interstate Communications With Intent to Extort in violation of Title 18 U.S.C., Section 875 (d). A copy of the Criminal Information, Plea Agreement, Statement of Facts and Guilty Plea are attached as Exhibits "A," "B," "C," and "D," respectively.
5. That Respondent hereby acknowledges and adopts the facts as stated in the Plea Agreement and Statement of Facts attached hereto as Exhibits "B" and "C" respectively;
6. That the maximum sentence provided by statute for the offense to which the Respondent pled guilty is two (2) years imprisonment, a fine of not more than \$250,000, and a

term of supervised release of up to one (1) year;


7. That pursuant to Part Six, § IV, Paragraph 13-22 of the Rules of the Supreme Court of Virginia, Respondent's plea and the finding of guilt by the United State District Court for the Western District of Virginia, Charlottesville Division requires that Respondent's license to practice law in the Commonwealth of Virginia be suspended pending a hearing before the Disciplinary Board of the Virginia State Bar.

8. That as the result of his plea of guilty to one count Transmission of Interstate Communications With Intent to Extort in violation of Title 18 U.S.C., Section 875 (d), Respondent consents to the revocation by the Virginia State Bar of his license to practice law in the Commonwealth of Virginia;

9. That Respondent submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if a hearing were held pursuant to a Rule to Show Cause and if the matter were brought to a conclusion, he could not successfully defend the matter.

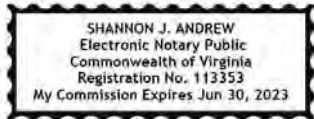
10. Pursuant to Part Six, § IV, Paragraph 13-28.B., I understand this affidavit and the admissions contained herein may not be deemed an admission in any proceeding except one relating to my status as a member of the Virginia State Bar.


Executed and dated on 07/06/2020 12:36 PM EDT.

D.M.K.L. 
Daniel Mathias Kincheloe
Respondent

COMMONWEALTH OF VIRGINIA
CITY/~~COUNTY~~ OF Richmond, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before
me by Daniel Mathias Kincheloe on 07/06/2020 12:39 PM EDT.



Shannon J. Andrew 
Notary Public

Online Notary Public. This notarial act involved the use of online audio/video communication technology.

CLERK'S OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA
FILED
6/19/20
JULIA C. DUDLEY, CLERK
BY: K. Dotson
DEPUTY CLERK

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE**

UNITED STATES OF AMERICA, :
 :
 : Case No. 3:20cr00014
 v. :
 :
 : Violations: 18 U.S.C. § 875(d)
 DANIEL KINCHELOE, :
 : 18 U.S.C. § 2
 :
 :
 Defendant. :

CRIMINAL INFORMATION

The United States Attorney charges that:

Relevant Entities and Individuals

1. DANIEL KINCHELOE was an active member of the Virginia bar whose office was located in Richmond, Virginia.
 2. Timothy Litzenburg was an active member of the Virginia bar whose office was located in Charlottesville, Virginia.
 3. Company 1 was a chemicals manufacturer, with facilities located all over the world.
 4. Company 2 was a publicly traded U.S. corporation listed on the NASDAQ exchange.
- In or around 2018, Company 2 acquired Company 1.
5. Attorney 1 was a lawyer employed at a large U.S. law firm. Attorney 1 represented Company 1 in discussions with Litzenburg and KINCHELOE.
 6. Golden Ratio, LLC was an active Virginia corporation registered on or about October 21, 2019. KINCHELOE was listed as the registered agent of Golden Ratio, LLC.

COUNT 1
Transmission of Interstate Communications with Intent to Extort
(18 U.S.C. § 875(d))

1. Paragraphs 1 through 6 of this Criminal Information are realleged and incorporated by reference as though fully set forth herein.

2. On or about October 24, 2019, in the Western District of Virginia and elsewhere, Timothy Litzenburg, aided and abetted by the defendant, DANIEL KINCHELOE, did knowingly, and with intent to extort from a corporation any money and other thing of value, did transmit in interstate commerce a communication containing a threat to injure the property and reputation of a corporation, to wit, Litzenburg, aided and abetted by KINCHELOE, in an interstate email sent to Attorney 1, threatened to cause substantial financial harm to Company 1 and its reputation if Company 1 did not agree to enter a purported “consulting agreement” with Litzenburg and KINCHELOE, and make payments to Litzenburg, KINCHELOE, and others of \$200,000,000 to their company, Golden Ratio, LLC.

In violation of Title 18, United States Code, Sections 875(d) and 2.

ROBERT A. ZINK
Chief, Fraud Section
Criminal Division
United States Department of Justice

By:



L. Rush Atkinson
Assistant Chief
Henry P. Van Dyck
Principal Assistant Chief

CLERK'S OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA
FILED
6/19/20
JULIA C. DUDLEY, CLERK
BY: K. Dotson
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

UNITED STATES OF AMERICA

v.

DANIEL KINCHELOE

Criminal No. 3:20cr00014

PLEA AGREEMENT

I have agreed to enter into a plea agreement with the United States of America, pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms and conditions of this agreement are as follows:

A. CHARGE(S) TO WHICH I AM PLEADING GUILTY AND WAIVER OF RIGHTS

1. The Charges and Potential Punishment

My attorney has informed me of the nature of the charge and the elements of the charge that must be proved by the United States beyond a reasonable doubt before I could be found guilty as charged.

I agree to plead guilty to an Information, which is a charge brought by the United States Department of Justice, Criminal Division, Fraud Section as opposed to one returned by a Grand Jury. I am waiving and giving up my right to be charged by Indictment and have a Grand Jury vote on my probable guilt.

I will enter a plea of guilty to Count 1 of the Information.

Count 1 charges me with transmission of interstate communications with intent to extort, in violation of 18 U.S.C. § 875(d). The maximum statutory penalty is a term of imprisonment of two years and/or a fine of \$250,000, plus a term of supervised release of one year.

I understand restitution may be ordered, my assets may be subject to forfeiture, and fees may be imposed to pay for incarceration, supervised release, and costs of prosecution. In addition,

Defendant's Initials: ZMK

a \$100 special assessment, pursuant to 18 U.S.C. § 3013, will be imposed per felony count of conviction. I further understand my supervised release may be revoked if I violate its terms and conditions. I understand a violation of supervised release increases the possible period of incarceration.

I am pleading guilty as described above because I am in fact guilty and because I believe it is in my best interest to do so and not because of any threats or promises. There has been no promise made whatsoever by anyone as to what the final disposition of this matter will be.

2. Waiver of Constitutional Rights Upon a Plea of Guilty

I acknowledge I have had all of my rights explained to me and I expressly recognize I have the following constitutional rights and, by voluntarily pleading guilty, I knowingly waive and give up these valuable constitutional rights:

- a. The right to plead not guilty and persist in that plea;
- b. The right to a speedy and public jury trial;
- c. The right to assistance of counsel at that trial and in any subsequent appeal;
- d. The right to remain silent at trial;
- e. The right to testify at trial;
- f. The right to confront and cross-examine witnesses called by the government;
- g. The right to present evidence and witnesses in my own behalf;
- h. The right to compulsory process of the court;
- i. The right to compel the attendance of witnesses at trial;
- j. The right to be presumed innocent;
- k. The right to a unanimous guilty verdict; and
- l. The right to appeal a guilty verdict.

B. SENTENCING PROVISIONS

1. General Matters

I understand the determination of what sentence should be imposed, within the confines of any applicable statutory minimums and maximums, is in the sole discretion of the Court subject to its consideration of the United States Sentencing Guidelines ("guidelines" or "U.S.S.G") and the factors set forth at 18 U.S.C. § 3553(a). I understand I will have an opportunity to review a copy of my presentence report in advance of my sentencing hearing and may file objections, as appropriate. I will have an opportunity at my sentencing hearing to present evidence, bring witnesses, cross-examine any witnesses the government calls to testify, and argue to the Court

Defendant's Initials: Dnk

what an appropriate sentence should be within the confines of the terms of this agreement.

I understand I will not be eligible for parole during any term of imprisonment imposed. I understand the Court is not bound by any recommendation or stipulation contained in this agreement and may sentence me up to the statutory maximum. I understand I will not be allowed to withdraw my plea of guilty if the Court disregards the stipulations and/or recommendations set forth in the plea agreement.

I understand if the sentence is more severe than I expected, I will have no right to withdraw my plea. I have discussed sentencing issues with my attorney and realize there is a substantial likelihood I will be incarcerated.

2. Sentencing Guidelines

I stipulate and agree that all matters pertaining to any of the counts of the charging document(s), including any dismissed counts, are relevant conduct for purposes of sentencing.

The parties agree the 2019 edition of the United States Sentencing Guidelines Manual applies to any guidelines calculation made pertaining to my offense(s). I stipulate that the following guideline section(s) are applicable to my conduct:

2B3.3(a)	9	Base Offense Level
2B3.3(b)(1) & 2B1.1(b)(1)(N)	+ 26	Amount demanded between \$150 million and \$250 million

I agree to accept responsibility for my conduct. If I comply with my obligations under this plea agreement and accept responsibility for my conduct, the United States will recommend the Court grant me a two-level reduction in my offense level, pursuant to U.S.S.G. § 3E1.1(a) and, if applicable, at sentencing, will move that I receive a one-level reduction in my offense level, pursuant to U.S.S.G. § 3E1.1(b), for purposes of any guidelines calculation. However, I stipulate that if I fail to accept responsibility for my conduct or fail to comply with any provision of this plea agreement, I should not receive credit for acceptance of responsibility.

3. Substantial Assistance

I understand the United States retains all of its rights pursuant to Fed. R. Crim. P. 35(b), U.S.S.G. §5K1.1 and 18 U.S.C. § 3553(e). I understand even if I fully cooperate with law enforcement, the United States is under no obligation to make a motion for the reduction of my sentence. I understand if the United States makes a motion for a reduction in my sentence, the

Defendant's Initials: DMK

Court, after hearing the evidence, will determine how much of a departure, if any, I should be given.

4. Monetary Obligations

a. Special Assessments, Fines and Restitution

I understand persons convicted of crimes are required to pay a mandatory assessment of \$100.00 per felony count of conviction. I agree I will submit to the U.S. Clerk's Office, a certified check, money order, or attorney's trust check, made payable to the "Clerk, U.S. District Court" for the total amount due for mandatory assessments prior to entering my plea of guilty.

I agree to pay restitution for the entire scope of my criminal conduct, including, but not limited to, all matters included as relevant conduct. In addition, I agree to pay any restitution required by law, including, but not limited to, amounts due pursuant to 18 USC §§ 2259, 3663, and/or 3663A. I understand and agree a requirement I pay restitution for all of the above-stated matters will be imposed upon me as part of any final judgment in this matter.

I further agree to make good faith efforts toward payment of all mandatory assessments, restitution and fines, with whatever means I have at my disposal. I agree failure to do so will constitute a violation of this agreement. I will execute any documents necessary to release the funds I have in any repository, bank, investment, other financial institution, or any other location in order to make partial or total payment toward the mandatory assessments, restitution and fines imposed in my case.

I fully understand restitution and forfeiture are separate financial obligations which may be imposed upon a criminal defendant. I further understand there is a process within the Department of Justice whereby, in certain circumstances, forfeited funds may be applied to restitution obligations. I understand no one has made any promises to me that such a process will result in a decrease in my restitution obligations in this case.

I understand and agree, pursuant to 18 U.S.C. §§ 3613 and 3664(m), whatever monetary penalties are imposed by the Court will be due immediately and subject to immediate enforcement by the United States as provided for by statute. I understand if the Court imposes a schedule of payments, that schedule is only a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

I agree to grant the United States a wage assignment, liquidate assets, or complete any other tasks which will result in immediate payment in full, or payment in the shortest time in which full

Defendant's Initials: DMK

payment can be reasonably made as required under 18 U.S.C. § 3572(d).

I expressly authorize the United States Department of Justice to obtain a credit report on me in order to evaluate my ability to satisfy any financial obligation imposed by the Court.

I agree the following provisions, or words of similar effect, should be included as conditions of probation and/or supervised release: (1) "The defendant shall notify the Financial Litigation Unit, United States Attorney's Office, in writing, 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 after the execution of this agreement until all fines, restitution, money judgments and monetary assessments are paid in full" and (2) "The Defendant shall notify the Financial Litigation Unit, United States Attorney's Office, in writing, at least 30 days prior to transferring any interest in property owned directly or indirectly by Defendant, including any interest held or owned under any other name or entity, including trusts, partnership and/or corporations until all fines, restitution, money judgments and monetary assessments are paid in full." See 18 U.S.C. § 3664(k), (n).

Regardless of whether or not the Court specifically directs participation or imposes a schedule of payments, I agree to fully participate in inmate employment under any available or recommended programs operated by the Bureau of Prisons.

I agree any payments made by me shall be applied fully to the non-joint and several portion of my outstanding restitution balance until the non-joint and several portion of restitution is paid in full, unless the Court determines that to do so would cause a hardship to a victim of the offense(s).

b. Duty to Make Financial Disclosures

I understand in this case there is a possibility substantial fines and/or restitution may be imposed. In order to assist the United States as to any recommendation and in any necessary collection of those sums, I agree, if requested by the United States, to provide a complete and truthful financial statement to the United States Department of Justice, Criminal Division, Fraud Section, within 30 days of the request or 3 days prior to sentencing, whichever is earlier, detailing all income, expenditures, assets, liabilities, gifts and conveyances by myself, my spouse and my dependent children and any corporation, partnership or other entity in which I hold or have held an interest, for the period starting on January 1st of the year prior to the year my offense began and continuing through the date of the statement. This financial statement shall be submitted in a form acceptable to the United States Department of Justice, Criminal Division, Fraud Section.

Defendant's Initials: DMK

From the time of the signing of this agreement or the date I sign the financial statement, whichever is earlier, I agree not to convey anything of value to any person without the authorization of the United States Department of Justice, Criminal Division, Fraud Section.

c. Understanding of Collection Matters

I understand:

1. as part of the judgment in this case I will be ordered to pay one or more monetary obligations;
2. payment should be made as ordered by the Court;
3. I must mail payments, by cashier's check or money order, payable to the "Clerk, U.S. District Court" to: 210 Franklin Road, S.W., Suite 540, Roanoke, Virginia 24011; and include my name and court number on the check or money order;
4. interest (unless waived by the Court) and penalties must be imposed for late or missed payments;
5. the United States may file liens on my real and personal property that will remain in place until monetary obligations are paid in full, or until liens expire (the later of 20 years from date of sentencing or release from incarceration);
6. if I retain counsel to represent me regarding the United States' efforts to collect any of my monetary obligations, I will immediately notify the United States Attorney's Office, ATTN: Financial Litigation Unit, P.O. Box 1709, Roanoke, Virginia 24008-1709, in writing, of the fact of my legal representation; and
7. I, or my attorney if an attorney will represent me regarding collection of monetary obligations, can contact the U.S. Attorney's Office's Financial Litigation Unit at (540) 857-2259.

C. ADDITIONAL MATTERS

1. Waiver of Right to Appeal

Knowing that I have a right of direct appeal of my sentence under 18 U.S.C. § 3742(a) and the grounds listed therein, I expressly waive the right to appeal my sentence on those grounds or on any ground. In addition, I hereby waive my right of appeal as to any and all other issues in this matter and agree I will not file a notice of appeal. I am knowingly and voluntarily waiving any right to appeal. By signing this agreement, I am explicitly and irrevocably directing my attorney not to file a notice of appeal. *Notwithstanding any other language to the contrary, I am not waiving my right to appeal or to have my attorney file a notice of appeal, as to any issue which cannot be waived, by law.* I understand the United States expressly reserves all of its rights to

Defendant's Initials: DAK

appeal. I agree and understand if I file any court document (except for an appeal based on an issue that cannot be waived, by law, or a collateral attack based on ineffective assistance of counsel) seeking to disturb, in any way, any order imposed in my case such action shall constitute a failure to comply with a provision of this agreement.

2. Waiver of Right to Collaterally Attack

I waive any right I may have to collaterally attack, in any future proceeding, any order issued in this matter, unless such attack is based on ineffective assistance of counsel, and agree I will not file any document which seeks to disturb any such order, unless such filing is based on ineffective assistance of counsel. I agree and understand that if I file any court document (except for an appeal based on an issue not otherwise waived in this agreement; an appeal based on an issue that cannot be waived, by law; or a collateral attack based on ineffective assistance of counsel) seeking to disturb, in any way, any order imposed in my case, such action shall constitute a failure to comply with a provision of this agreement.

3. Information Access Waiver

I knowingly and voluntarily agree to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §552a.

4. Waiver of Witness Fee

I agree to waive all rights, claims or interest in any witness fee I may be eligible to receive pursuant to 28 U.S.C. § 1821, for my appearance at any Grand Jury, witness conference or court proceeding.

5. Abandonment of Seized Items

By signing this plea agreement, I hereby abandon my interest in, and consent to the official use, destruction or other disposition of each item obtained by any law enforcement agency during the course of the investigation, unless such item is specifically provided for in another provision of this plea agreement. I further waive any and all notice of any proceeding to implement the official use, destruction, abandonment, or other disposition of such items.

6. Deportation

Defendant's Initials: DNK

I understand if I am not a citizen of the United States, I may be subject to deportation from the United States, denied United States citizenship, and denied admission to the United States in the future, as a result of my conviction for the offense(s) to which I am pleading guilty.

7. Denial of Federal Benefits

At the discretion of the court, I understand I may also be denied any or all federal benefits, as that term is defined in 21 U.S.C. § 862, (a) for up to five years if this is my first conviction of a federal or state offense consisting of the distribution of controlled substances, or up to one year if this is my first conviction of a federal or state offense involving the possession of a controlled substance; or (b) for up to ten years if this is my second conviction of a federal or state offense consisting of the distribution of controlled substances, or up to five years if this is my second or more conviction of a federal or state offense involving the possession of a controlled substance. If this is my third or more conviction of a federal or state offense consisting of the distribution of controlled substances, I understand I could be permanently ineligible for all federal benefits, as that term is defined in 21 U.S.C. § 862(d).

8. Admissibility of Statements

I understand if I fail to plead guilty in accordance with this agreement or withdraw my plea(s) of guilty any statements I make (including this plea agreement, and my admission of guilt) during or in preparation for any guilty plea hearing, sentencing hearing, or other hearing and any statements I make or have made to law enforcement agents, in any setting (including during a proffer), may be used against me in this or any other proceeding. I knowingly waive any right I may have under the Constitution, any statute, rule or other source of law to have such statements, or evidence derived from such statements, suppressed or excluded from being admitted into evidence and stipulate that such statements can be admitted into evidence.

9. Additional Obligations

I agree to cooperate fully with law enforcement agents and will disclose to them, at any time requested by them, my knowledge of any criminal activity. I agree I will testify truthfully. I hereby waive any right I may have to refuse to answer any questions. I agree to be debriefed by law enforcement agents concerning any matter. I understand it is a felony offense to make false statements to law enforcement agents or to testify falsely.

I agree not to commit any of the following acts:

- attempt to withdraw my guilty plea;

Defendant's Initials: DAK

- deny I committed any crime to which I have pled guilty;
- make or adopt any arguments or objections to the presentence report that are inconsistent with this plea agreement;
- obstruct justice;
- fail to comply with any provision of this plea agreement;
- commit any other crime;
- make a false statement;
- fail to enter my plea of guilty when scheduled to do so, unless a continuance is agreed to by the United States Attorney's Office and granted by the Court;
- fail to testify truthfully, as to any matter, if called upon to do so (at my sentencing hearing or any other proceeding);
- refuse to answer any question;
- fail to comply with any reasonable request of the United States Attorney's Office; or
- fail to cooperate with law enforcement agents.

D. REMEDIES AVAILABLE TO THE UNITED STATES

I hereby stipulate and agree that the United States Department of Justice, Criminal Division, Fraud Section may, at its election, pursue any or all of the following remedies if I fail to comply with any provision of this agreement: (a) declare this plea agreement void; (b) refuse to dismiss any charges; (c) reinstate any dismissed charges; (d) file new charges; (e) withdraw any substantial assistance motion made, regardless of whether substantial assistance has been performed; (f) refuse to abide by any provision, stipulations, and/or recommendations contained in this plea agreement; or (g) take any other action provided for under this agreement or by statute, regulation or court rule.

In addition, I agree if, for any reason, my conviction is set aside, or I fail to comply with any obligation under the plea agreement, the United States may file, by indictment or information, any charges against me which were filed and/or could have been filed concerning the matters involved in the instant investigation. I hereby waive my right under Federal Rule of Criminal Procedure 7 to be proceeded against by indictment and consent to the filing of an information against me concerning any such charges. I also hereby waive any statute of limitations defense as to any such charges.

The remedies set forth above are cumulative and not mutually exclusive. The United States' election of any of these remedies, other than declaring this plea agreement void, does not, in any way, terminate my obligation to comply with the terms of the plea agreement. The use of "if" in this section does not mean "if, and only if."

Defendant's Initials: DMK

E. GENERAL PROVISIONS

1. Limitation of Agreement

This agreement only binds the United States Department of Justice, Criminal Division, Fraud Section. It does not bind any state or local prosecutor, other United States Attorney's Office or other office or agency of the United States Government, including, but not limited to, the Tax Division of the United States Department of Justice, or the Internal Revenue Service of the United States Department of the Treasury. These individuals and agencies remain free to prosecute me for any offense(s) committed within their respective jurisdictions.

2. Effect of My Signature

I understand my signature on this agreement constitutes a binding offer by me to enter into this agreement. I understand the United States has not accepted my offer until it signs the agreement.

3. Effective Representation

I have discussed the terms of the foregoing plea agreement and all matters pertaining to the charges against me with my attorney and am fully satisfied with my attorney and my attorney's advice. At this time, I have no dissatisfaction or complaint with my attorney's representation. I agree to make known to the Court no later than at the time of sentencing any dissatisfaction or complaint I may have with my attorney's representation.

4. Misconduct

If I have any information concerning any conduct of any government attorney, agent, employee, or contractor which could be construed as misconduct or an ethical, civil, or criminal violation, I agree to make such conduct known to the United States Department of Justice, Criminal Division, Fraud Section and the Court, in writing, as soon as possible, but no later than my sentencing hearing.

5. Final Matters

I understand a thorough presentence investigation will be conducted and sentencing recommendations independent of the United States Department of Justice, Criminal Division, Fraud Section will be made by the presentence preparer, which the Court may adopt or take into

Defendant's Initials: DMK

consideration. I understand any calculation regarding the guidelines by the United States Department of Justice, Criminal Division, Fraud Section or by my attorney is speculative and is not binding upon the Court, the Probation Office or the United States Department of Justice, Criminal Division, Fraud Section. No guarantee has been made by anyone regarding the effect of the guidelines on my case.

I understand the prosecution will be free to allocute or describe the nature of this offense and the evidence in this case and make any recommendations not prohibited by this agreement.

I understand the United States retains the right, notwithstanding any provision in this plea agreement, to inform the Probation Office and the Court of all relevant facts, to address the Court with respect to the nature and seriousness of the offense(s), to respond to any questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report and to respond to any statements made to the Court by or on behalf of the defendant.

I willingly stipulate there is a sufficient factual basis to support each and every material factual allegation contained within the charging document(s) to which I am pleading guilty.

I understand this agreement does not apply to any crimes or charges not addressed in this agreement. I understand if I should testify falsely in this or in a related proceeding I may be prosecuted for perjury and statements I may have given authorities pursuant to this agreement may be used against me in such a proceeding.

I understand my attorney will be free to argue any mitigating factors on my behalf; to the extent they are not inconsistent with the terms of this agreement. I understand I will have an opportunity to personally address the Court prior to sentence being imposed.


This writing sets forth the entire understanding between the parties and constitutes the complete plea agreement between the United States Department of Justice, Criminal Division, Fraud Section, and me, and no other additional terms or agreements shall be entered except and unless those other terms or agreements are in writing and signed by the parties. This plea agreement supersedes all prior understandings, promises, agreements, or conditions, if any, between the United States and me.

I have consulted with my attorney and fully understand all my rights. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it. I have not been coerced, threatened, or promised anything other than the terms of this plea agreement, described above, in exchange for my plea of guilty. Being aware of all of the possible consequences of my plea, I have independently decided to enter this plea of

Defendant's Initials: DMIL

my own free will, and am affirming that agreement on this date and by my signature below.

Date: 6/17/20



Daniel Kincheloe, Defendant

I have fully explained all rights available to my client with respect to the offenses listed in the pending charging document(s). I have carefully reviewed every part of this plea agreement with my client. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

If I will continue to represent my client regarding the United States' efforts to collect any monetary obligations, I will notify the United States Attorney's Office, ATTN: Financial Litigation Unit, P.O. Box 1709, Roanoke, Virginia 24008-1709, in writing, of the fact of my continued legal representation within 10 days of the entry of judgment in this case.

Date: 6/17/20



**Bill Dinkin, Esq.
Counsel for Defendant**

Defendant's Initials: DMK

Attorneys for the United States:

June 1, 2020

Date: _____



L. Rush Atkinson
Assistant Chief, Fraud Section
U.S. Department of Justice, Criminal Division
New York State Bar Registration No. 4977377

June 17, 2020

Date: _____



Henry P. Van Dyck
Principal Assistant Chief, Fraud Section
U.S. Department of Justice, Criminal Division
District of Columbia Bar No. 979872

Defendant's Initials: DNK

CLERK'S OFFICE, U.S. DIST. COURT
AT HARRISONBURG, VA
FILED
6/19/20
JULIA C. DUDLEY, CLERK
BY: K. Dotson
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA)
)
 v.)
)
 DANIEL KINCHELOE)
)

Criminal No.: 3:20cr00014

STATEMENT OF FACTS

The parties stipulate that the allegations contained in the Information and the following facts are true and correct, and that had this matter gone to trial, the United States would have proven each of these facts beyond a reasonable doubt.

DANIEL KINCHELOE was an active member of the Virginia bar whose office was located in Richmond, Virginia. Timothy Litzenburg was an active member of the Virginia bar whose office was located in Charlottesville, Virginia. Starting in or around 2018, KINCHELOE and Litzenburg formed a law firm specializing in representing plaintiffs in mass torts litigation.

As partners, KINCHELOE and Litzenburg represented plaintiffs who alleged that the weed-killer sold under the brand name Roundup caused cancer in Roundup users. By the fall of 2019, KINCHELOE and Litzenburg had been engaged by hundreds of clients to represent them as plaintiffs in litigation related to Roundup.

Company 1 was a chemicals manufacturer, with facilities located all over the world. Company 2 was a publicly traded U.S. corporation listed on the NASDAQ exchange. In or around 2018, Company 2 acquired Company 1.

In or around early September 2019, Litzenburg, with KINCHELOE's agreement and knowledge, transmitted to Company 1 a draft complaint ("Draft Complaint") on behalf of Person 1, whom KINCHELOE and Litzenburg represented. The Draft Complaint alleged that Company 1 and other related companies were responsible for several chemical compounds used in Roundup, and that certain of those chemicals caused cancer in Roundup users. Among other things, the Draft Complaint alleged that Company 1 knew of the carcinogenic properties of these chemicals but failed to warn Roundup users and others exposed to Roundup about such risks.

After receiving the Draft Complaint, Attorney 1 and Attorney 2 began representing Company 1 as Company 1's counsel in discussions with Litzenburg and KINCHELOE.

Defendant's Initials: Dnk

On or about October 16, 2019, Litzenburg, KINCHELOE, and Attorney 1 participated in a telephone call while Attorney 1 was outside the Commonwealth of Virginia. In sum and substance, Litzenburg stated during the call that he still intended to file the Draft Complaint, unless a resolution could be found. Litzenburg also indicated that if he did file a public lawsuit, other lawsuits would likely follow as the public became aware of Company 1's role. After describing the possibility of the lawsuits against Company 1, Litzenburg proposed, in sum and substance, that he and KINCHELOE could enter into a "consulting arrangement" with Company 1. Doing so, Litzenburg stated, would create a purported conflict-of-interest that would effectively stop him from representing plaintiffs in litigation against Company 1. After the October 16, 2019 call, Litzenburg, with KINCHELOE'S knowledge and agreement, demanded that Company 1 pay Litzenburg, KINCHELOE, and others, a total of \$200 million in purported "consulting fees."

On or about October 21, 2019, KINCHELOE registered Golden Ratio, LLC as a Virginia corporation. KINCHELOE and Litzenburg agreed together to create Golden Ratio, LLC for the purpose of receiving monies from Company 1, which KINCHELOE and Litzenburg agreed to split amongst themselves and their associates. KINCHELOE and Litzenburg agreed that they would not distribute any of the monies Company 1 paid them as purported "consulting fees" to their existing clients. KINCHELOE and Litzenburg further agreed that they would each take \$50 million of the \$200 million in total payments from Company 1 for themselves, with the remainder paid to two other associates.

On or about October 24, 2019, Litzenburg sent an email to Attorney 1 while Attorney 1 was outside the Commonwealth of Virginia. In the email, which KINCHELOE helped draft, Litzenburg made threats to injure the property and reputation of Company 1 and Company 2 unless Litzenburg, KINCHELOE, and others were paid \$200 million pursuant to purported "consulting arrangements." If the \$200 million was not paid, Litzenburg threatened in the email that Litzenburg, KINCHELOE, and others would commence litigation that would become "an ongoing and exponentially growing problem for [Company 1], particularly when the media inevitably takes notice." Litzenburg further threatened in the email that such litigation would cost Company 1 and Company 2 "billions, setting aside the associated drop in stock price and reputation damage."

On or about November 6, 2019, Litzenburg sent an email to Attorney 1 and Attorney 2, copying KINCHELOE, while both Attorney 1 and Attorney 2 were outside the Commonwealth of Virginia. In the email, Litzenburg made threats to injure the property and reputation of Company 1 and Company 2 unless Litzenburg, KINCHELOE, and others were paid the \$200 million pursuant to purported "consulting arrangements." Litzenburg claimed in the email that he had a "list of 1000ish Roundup clients" and threatened that unless Litzenburg, KINCHELOE, and others were paid the \$200 million, Company 1 would have "thousands of future plaintiffs against [Company 1]." Litzenburg concluded the email in part by threatening, "That is another thing I can guarantee and warrant: in the absence of a so-called 'global' or final deal with me, this will

Defendant's Initials: DAK

certainly balloon into an existential threat to [Company 1].”

On or about November 12, 2019, Litzenburg and KINCHELOE met in person with Attorney 1 and Attorney 2 at a conference center in Charlottesville, Virginia. During the meeting, Litzenburg again threatened to injure the property and reputation of Company 1 and Company 2 unless Litzenburg, KINCHELOE, and others were paid \$200 million pursuant to purported “consulting arrangements.” Litzenburg said in part: “what’s certain . . . is that if we walk out of here today without a deal, and we, uh, you know, the [Person 1] case gets filed and gets served. And we’ve talked about the consequences.” Litzenburg also stated that if Litzenburg, KINCHELOE, and others commenced litigation against Company 1, there was no way Company 1 “gets out of it for less” than “[a] billion. Yeah. No, I mean, nuisance value, uh, defense lawyer fees, a hit in the stock when this gets filed and served, maybe the press conference, whatever.” Litzenburg also stated, “[W]e can be, um, your biggest problem. Right now we’re your only problem or potential problem.” Later on, Litzenburg again stated, in sum and in part, if Litzenburg, KINCHELOE, and others commenced litigation it would have adverse effects on Company 2’s stock price, which Litzenburg described as “a 40% stock loss coming off the top.” Litzenburg also stated to Attorney 1 and Attorney 2, “We walk out of here today, and you’re telling them [Company 1], you know, ‘You are absolutely, absolutely making a quarter of a million, 500 million, billion plus dollar investment in a public relations nightmare.’” Later on during the meeting, Attorney 2 asked what entity would serve as the entity to which the \$200 million would be paid to Litzenburg, KINCHELOE, and others. KINCHELOE responded that the money should be paid to “Golden Ratio LLC,” the same entity that KINCHELOE and Litzenburg had previously agreed would receive any movies paid by Company 1 and Company 2, and which KINCHELOE had registered as a Virginia corporation.

In performing the above actions, KINCHELOE agreed with Litzenburg to extort money from Company 1 and Company 2, and aided and abetted Litzenburg in extorting money from Company 1 and Company 2. Further, in demanding \$200 million from Company 1 and Company 2, KINCHELOE did not believe that either he or Litzenburg had a valid claim of right to a \$200 million payment from either Company 1 or Company 2.

The actions taken by KINCHELOE, as described above, were taken willfully, knowingly, and with the specific intent to extort money from Company 1 and Company 2. KINCHELOE acknowledges that the purpose of the foregoing statement of facts is to provide an independent factual basis for his guilty plea. It does not necessarily identify all of the persons with whom the defendant might have engaged in illegal activity, nor does it necessarily identify all of the facts known to KINCHELOE concerning illegal activity in which he or others may have engaged.

Respectfully submitted,

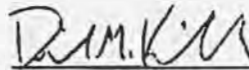
Defendant’s Initials: DAL



L. Rush Atkinson
Assistant Chief, Fraud Section

Henry P. Van Dyck
Principal Assistant Chief, Fraud Section

After consulting with my attorney and pursuant to the plea agreement entered into this day, I stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.



Daniel Kincheloe, Defendant

I am Daniel Kincheloe's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.



Bill Dinkin, Esquire
Counsel for Defendant

Defendant's Initials: Dnk

FILED
6/19/20

JULIA C. DUDLEY, CLERK
BY: K. Dotson
DEPUTY CLERK

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CHARLOTTESVILLE DIVISION

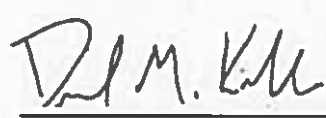
UNITED STATES OF AMERICA

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DANIEL KINCHELOE

In the presence of Bill Dinkin, my counsel, who has fully explained the charges contained in the information against me, and having received a copy of the information from the United States Attorney before being called upon to plead, I hereby plead guilty to said information and count(s) 1 thereof. I have been advised of the maximum punishment which may be imposed by the court for this offense. My plea of guilty is made knowingly and voluntarily and without threat of any kind or without promises other than those disclosed here in open court.



Signature of Defendant

6/19/20
Date



Witness