UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1:19-cr-378-JMS-MJD
	)	
WILLIAM ERIC MEEK, and	)	-01
BOBBY LEE PEAVLER,	)	-02
	)	
Defendants.	)	

GOVERNMENT'S MOTION IN LIMINE REGARDING USE OF DEFENDANT'S PROFFER STATEMENTS

The United States of America, by and through its counsel of record, files this Motion *in limine* to introduce Defendant Bobby Lee Peavler's prior statements made in a proffer session when authorized by the applicable proffer agreement.

The government does not intend to offer evidence of the proffer statements absent an applicable exception, as discussed below. To that end, the government is not aware whether Peavler intends on testifying at trial or presenting any evidence or arguments that run counter to his statements made at the proffer.[1] However, in anticipation that may be the case, the government seeks a ruling from the Court that, consistent with the proffer agreement, it be permitted to cross-examine Peavler with his statements, and that the government be permitted to introduce any statements to rebut any evidence or arguments offered on his behalf.

Further, if the evidence at trial demonstrates that Peavler was not completely truthful in his proffer session, the agreement should be deemed void and unenforceable. In that case, the

[1] Counsel for Peavler stated at the October 2021 status conference that Peavler anticipated putting on a substantial defense, which could include up to a week of testimony.

government is no longer bound to its agreement, and can use the statements made by the Peavler for any admissible purpose. This is consistent with the plain and unambiguous language in the proffer agreement, and this agreement should be enforced as written.

I. Background

A. Proffer Agreement

On August 26, 2019, Peavler participated in a proffer interview with the government. Present on Peavler's behalf were attorneys Sergio Acosta, Doug Paul, and Sarah Wong of Akerman LLP. Present on behalf of the government were DOJ Attorneys Rush Atkinson and Kyle Maurer, AUSA Nick Linder, FBI Special Agents Victoria Madtson and Joseph Weston, and United States Postal Inspector Anna Hallstrom. Before answering questions, Peavler and his attorney signed a proffer agreement ("Proffer Agreement"). *See* Gov. Ex. A.

The Proffer Agreement stated that Peavler "agreed to provide information to the government, and to respond to questions *truthfully and completely*." *Id*. at 1 (emphasis added). In exchange, the government agreed that if Peavler were prosecuted, no statements from the proffer could be used against him at trial in the government's case-in-chief. *Id*. Exceptions to that provision included the following:

> (5) In any proceeding, including sentencing, the government may use [the defendant's] statements and any information provided by [the defendant] during or in connection with the meeting *to cross-examine [the defendant], to rebut any evidence or arguments offered on [the defendant's] behalf, or to address any issues or questions raised by a court on its own initiative*.

Id. at 2 (emphasis added). Lastly, the Proffer Agreement concludes, "[Defendant] and [Defendant's] attorney acknowledge that they have read, fully discussed and understand every paragraph and clause in this document and the consequences thereof." *Id*. at 3.

B. Relevant Prior Statements

During the August 2019 proffer, Peavler provided information concerning many topics which the government believes will be relevant at trial. The interview was memorialized in a report authored by Special Agents Victoria Madtson and Joseph Weston. *See* Gov. Ex. B. Notable statements from the report include but are not limited to the following:

- "Peavler knew the deal with Stoops involved trucks going out and coming in. Peavler had the most knowledge about the fourth and final transaction with Stoops." *Id*.
- "Stoops was going to fund $25 million to Celadon/Quality before the end of the quarter. Peavler was involved with developing the terms of the payment structuring arrangement." *Id*. at 3.
- "The interviewers asked Peavler whether on September 30, 2016, after Celadon/Quality received the money from Stoops, Quality was obligated to buy equipment from Stoops. Peavler responded 'yes.'" *Id*.
- "Peavler acknowledged that if Celadon had not taken the $30.4 million from Stoops, it would have been over the 4-to-1 ratio." *Id*.
- "Peavler acknowledged that the purpose of timing the transaction that way was to have a cushion for the debt covenant. Looking back now, investors wanted to know about the $27 million." *Id*.
- '"Peavler acknowledged that Quality paid 'a very high amount' for used trucks. DOJ Attorney Atkinson read aloud, 'The Stoops sales and purchases transactions were conducted at arm's length and the prices at which the Company bought and sold vehicles reflect fair market values at the time of the transactions. Each transaction was discreet in nature and none were interdependent. There are no undisclosed side agreements related to these

transactions.' Peavler acknowledged that the purchases and sales were related, and there was a commitment back and forth." *Id*. at 5.

- "Peavler is not aware of anyone from Celadon or Quality ever telling BKD that the Stoops transaction was a trade." *Id*.
- "Peavler acknowledged to the interviewers that the Stoops deal was unusual. He also acknowledged that multiple certification statements were not truthful." *Id*. at 6.
- "Peavler acknowledged the following were true, as of the September 30, 2016 quarter-end:
    - Celadon had not disclosed all related transactions
    - Celadon had not disclosed all significant transactions.
    - Celadon had still not disclosed the purchase agreement with Stoops as of the December 31, 2016 quarter-end.
    - Celadon certified that each transaction was discrete in nature, but Peavler acknowledged that one side of the transaction was conditional on the other." *Id*. at 6.
- "Peavler was involved with the preparation session for the April 2017 meeting with BKD. . . . Peavler doesn't recall advising Williams and Tarble not to use the word 'trade.'" *Id*. at 7.
- "During the April 2017 meeting with BKD, Williams referred to the purchase agreement and BKD did not know what he was talking about. Long had to get the purchase agreement for BKD. Peavler doesn't know where Long obtained the purchase agreement. Peavler didn't have the final, signed purchase agreement before Williams sent it to him (Peavler). After Peavler received the signed purchase agreement from Williams, Meek came to

Peavler and said something to the effect of, 'I don't think we should send it to BKD. It will just make things worse.' Peavler replied to Meek, 'I think we should give it to them.'" *Id*. at 8.

- "If Celadon did not meet its debt covenants, it would ask Bank of America for a waiver and pay a fee for that waiver. Celadon would also have had to report its covenant compliance violation to the market, which would have a negative market impact." *Id*. at 11.

- "Peavler acknowledged that accounting rules state that if you are going to sell an asset, you have to put it on the books at FMV. Peavler also acknowledged that Meek's suggestion to put the trailers on Celadon's books at above-FMV was improper." *Id*. at 13.

- "The interviewers asked Peavler why no losses had been reported by Celadon despite the previously-discussed fall in the used truck market. Peavler stated that looking back, losses probably should have been reported. There was no allowance for losses in the fleet. Celadon's size as a company is such that a $10 million loss could be significant, but truck market analysts know the market fluctuates." *Id*. at 14.

- "Peavler recognized that there was an incentive to kick losses down the road. Meek's ego was such that he did not want to take a huge hit." Id.

- "The conversation was just between Meek and Peavler. Meek said that Williams was working on another deal with Stoops that could help with cash. In the prior deals with Stoops, Quality had paid Stoops before Stoops paid Quality. During this doorway conversation, Peavler asked Meek if he meant the timing of the cash, and Meek said yes." *Id*. at 15.

- "Peavler told him something to the effect of, 'I know what the timing was before but we would like to change it.' Peavler also said something to the effect of, 'it will help us out with cash flow at the end of the quarter.' Peavler thinks he mentioned Celadon's bank covenants." *Id*.

- "After Peavler's first telephone call with Grawe, he spoke with Meek, Williams, and Will, conveying that Stoops was going to discuss the proposal internally." *Id*.

- "The structure of the fourth Stoops transaction was that Stoops would fund first but Celadon had to buy Stoops' trucks afterward. This was in the top three transactions dollar-wise that quarter at Celadon. Celadon and Stoops signed an agreement that Celadon would buy $27 million of trucks from Stoops on October 3, 2016. Peavler believes there should have been a footnote about the October 3, 2016, purchase in Celadon's 10-Q." *Id*. at 16.

- "Investors sometimes asked about commitments and what would be happening in the future. Peavler acknowledged that Celadon did not report one of its largest commitments for the September 2016 10-Q." *Id*.

- "Peavler understands that BKD relied on Celadon's representations and was not there to question or catch errors or misstatements." *Id*. at 17.

- "Peavler acknowledged that Celadon was trying to find a loophole but he didn't think it was wrong. At the time, he thought Celadon didn't have to include the $27 million obligation to Stoops in Total Indebtedness based on his past experience only. He did not review any guidance, written or otherwise." *Id*. at 18.

- "Celadon knew its debt covenants would be tight and had conversations with Bank of America about whether Celadon would violate its debt covenants. Peavler never told Crask about Celadon's plan to space out the $27 million payment to Stoops until after quarter-end. Peavler acknowledged he did not share this information with Crask because it was Celadon's plan to meet its bank covenants." *Id*.

- "Peavler acknowledged that what he provided to Bank of America was deceptive." *Id*.

- "Celadon had the deals booked as sales and purchases, instead of trades, because [Peavler] thought it was the 'more clean way to do it.' If it was booked as a trade, they needed a third party valuation and there was a cost associated with that." *Id*. at 19.

- "Peavler thought that on June 30th, the balance sheet had been signed off on valuations. Peavler thought the term 'trade' meant values were based on each other. On the date of Document #10, he thought 'dependent' meant values, not relationship between the purchases and sales. If the language had been left in the Purchase Agreement, it would have raised questions with having to go through Celadon's legal department and a third party valuation would have been necessary. Peavler acknowledged the possible downside risk if they involved a third party for valuations." *Id*. at 20.

- "The interviewers directed Peavler to the second paragraph of the memo, on the page bates stamped CLDN_00319054, which read, in part: 'The table below summarizes the amounts and timing of each sale and purchase of the transactions. Although, none of the equipment values of the purchases and sales were linked to one another, some of the transactions were negotiated on or about the same time. However, there were no oral or written agreements that would otherwise link any of the transactions.' Peavler agrees with the interviewers that the last part about 'no oral or written agreements' was not true. Peavler acknowledged that he read all of the memo in Document #11 at the time." *Id*. at 20.

II. Applicable Law

Proffer agreements are "contracts," and "[a]s a contract, a proffer agreement must be enforced according to its terms." *United States v. Lopez*, 222 F.3d 428, 434 (7th Cir. 2000) (quoting *United States v. Cobblah*, 118 F.3d 549, 551 (7th Cir. 1997)). "[T]heir content and

meaning are determined according to ordinary contract principles." *United States v. Schilling*, 142 F.3d 388, 394 (7th Cir. 1998) (quoting *United States v. Ingram*, 979 F.2d 1179, 1184 (7th Cir.1992)). "As a general proposition, pre-trial agreements such as cooperation and proffer agreements are interpreted according to principles of contract law. When the terms of a contract are unambiguous, the intent of the parties is discerned from the four corners of the contract." *United States v. $87,118.00 in United States Currency*, 95 F.3d 511, 516–17 (7th Cir. 1996) (internal citations omitted).

While proffer agreements are "unique contracts" for which "the ordinary contract principles are supplemented with a concern that the bargaining process not violate the defendant's rights to fundamental fairness," the contract is still interpreted by its "literal terms" and courts apply the "most meticulous standards of both promise and performance to insure the integrity of the bargaining process involved in proffers." *United States v. Farmer*, 543 F.3d 363, 374 (7th Cir. 2008) (internal citations omitted); *see also United States v. Griffin*, 84 F.3d 912, 919 (7th Cir. 1996) ("As with any contract, the language of the proffer [agreement] binds the parties."); *United States v. Elder*, 2015 WL 13035104, at *1 (S.D. Ind. Mar. 27, 2015) ("Clauses such as [waivers in immunity letters] are enforceable contracts in the Seventh Circuit. . . . The Defendant is bound by this contract.")).

Typically, proffer agreements preclude the government's use of a defendant's proffer statements against him or her. Depending on the language of the proffer agreement, however, that immunity may dissolve upon inconsistent testimony by the defendant or a defense witness. In addition, proffer immunity may vanish when a defendant obtains evidence by cross-examination of a prosecution witnesses. *See United States v. Krilich*, 159 F.3d 1020, 1025 (7th Cir. 1998) ("Evidence is evidence, whether it comes out on direct or cross-examination. One can

'otherwise present' a position through arguments of counsel alone, so it is easy to see how a position can be 'presented' by evidence developed on cross-examination and elaborated by counsel."); *see also United States v. Nitch*, No. 02-CR-40078-JPG-15, 2005 WL 8146390, at *2 (S.D. Ill. Jan. 24, 2005) (noting that when a natural reading of a proffer agreement allows for impeachment material to be introduced if the defendant's arguments are contrary to positions taken in the proffer, it does not matter whether the arguments are asserted through defense witnesses or through "cross-examination of government witnesses" or "opening statements"). Agreements which condition immunity on the defendant refraining from offering contrary evidence or offering inconsistent positions are enforceable and do not improperly intrude on a defendant's right to confront witnesses at trial. *See Krilich*, 159 F.3d at 1025 ("Impeachment of a witness need not be 'contrary to' or 'inconsistent with' a defendant's admission of guilty in a bargaining proffer.").

For example, in *Krilich*, the proffer agreement "allowed the prosecutor to use the proffer as evidence if Krilich were to 'testify contrary to the substance of the proffer or otherwise present a position inconsistent with the proffer.'" *Id.* The defense attorney therefore was free to cross-examine prosecution witnesses in a manner "designed to cast doubt on the witnesses' ability to see clearly or suggest that they [we]re not trustworthy." *Id.* at 1026. Counsel was not permitted, however, to elicit testimony on cross-examination that "implie[d] the falsity" of a statement made in the proffer, without risking the admission of the proffer statements. *Id.* at 1025-26. Other Circuits have joined the Seventh Circuit in adopting this position. *See, e.g.*, *United States v. Shannon*, 803 F.3d 778, 785 (6th Cir. 2015) ("Thus, we reject Shannon's argument and conclude that the elicitation of testimony from Akhtar on cross-examination amounted to an 'offer of evidence' under the terms of the proffer agreement."); *United States v.*

Barrow, 400 F.3d 109, 118 (2nd Cir. 2005) ("Factual assertions made by a defendant's counsel in an opening argument or on cross-examination plainly fall within this broad language [of the immunity waiver].").

III. Argument

A. If Peavler testifies, the Government should be permitted to use his statements during cross-examination because that was specifically permitted in his Proffer Agreement.

If Peavler decides to testify at trial, the Government is explicitly permitted by the Proffer Agreement to cross examine him using the statements he made during the proffer session. As indicated above, Peavler signed a proffer agreement that stated, in substance, that the statements he made in the proffer could be used to "cross-examine" the defendant. *See* Gov. Ex. A at 2. As the Seventh Circuit has held, this is an "easy answer" because the defendant and his attorney "signed an agreement which specifically allowed the government to use statements [the defendant] made during the proffers for impeachment should he testify" at trial. *United States v. Goodapple*, 958 F.2d 1402, 1409 (7th Cir. 1992); *see also United States v. Caicedo*, No. 88 CR 620-2, 1989 WL 84709, at *7 (N.D. Ill. July 17, 1989) (defendant signed an agreement that allowed government to use his proffer statements to impeach him, so cross-examining him on his statements was allowed), *aff'd*, 937 F.2d 1227 (7th Cir. 1991).

The agreement that was executed between the government and the defendant is unambiguous and clear—if the defendant testifies, his prior statements can be used against him during cross examination. *Cf. United States v. Harris*, No. 2:10 CR 123, 2014 WL 1344277, at *5 (N.D. Ind. Apr. 4, 2014) (since a "proffer agreement is considered to be a contract and therefore must be enforced according to its terms[,] . . . derivative use of [defendant's]

statements to the government", which was a carve out in the proffer agreement, authorized the investigative efforts that stemmed from his statements), *aff'd*, 791 F.3d 772 (7th Cir. 2015).

B. The Government is also permitted to introduce statements made during the proffer sessions to rebut any evidence or arguments offered by or on behalf of Peavler at any point during the trial.

By executing the Proffer Agreement, the defendant also explicitly agreed that the government would be permitted to use any of his "statements and any information provided by" him or in connection with the proffer to "rebut any evidence or arguments offered on [his] behalf . . .". Gov. Ex. A at 2. This paragraph contains no limitations on when or how that evidence can be introduced. And, as the law in this Circuit makes clear, the natural reading of this provision permits the government to introduce those statements to rebut any evidence or arguments advanced by the defense whether in the defense case, during opening statements, or through cross-examination of government witnesses. Accordingly, if Peavler introduces any evidence or advances any argument at trial contrary to the statements he made in the proffer sessions, the government should be permitted to introduce the proffer statements as rebuttal evidence.

As noted above, "[i]t is well settled in this Circuit that once the defendant has entered into a proffer agreement, if he then offers evidence or arguments at trial inconsistent with the information provided in his offer, the government may introduce the contents of the proffer." *United States v. Peel*, No. 06-CR-30049 WDS, 2006 WL 3804846, at *5 (S.D. Ill. Dec. 22, 2006) (citing *Krilich*, 159 F.3d 1020). The Seventh Circuit has repeatedly held that, unless contrary to the terms of the proffer agreement, the government is permitted to introduce statements from proffer sessions when the defense advances any argument, including through cross-examining government witnesses, giving opening statements, and direct examinations of its own witnesses. *See, e.g., Krilich*, 159 F.3d at 1025 ("Introduction of the statements thus was proper if either his

testimony, or evidence that he presented through the testimony of others, contradicted the proffer.") (citations omitted). As such, if the defendant in his case, opening statement, or through his cross-examination "advance a position inconsistent with the proffer," his statements can be introduced. *Id.* at 1026; *see also United States v. Dortch*, 5 F.3d 1056, 1069 (7th Cir. 1993) ("just as the defendant must choose whether to protect the proffer statements by not taking the stand, the defendant must choose whether to protect the proffer by carefully determining which lines of questioning to pursue with different witnesses.").

Here, the Proffer Agreement allows for introduction of the defendant's statements "[i]n any proceeding … to rebut *any evidence or arguments offered*" on the defendant's behalf. Gov. Ex. A. at 2 (emphasis added). This language is unambiguous and absolute. As such, if the defense advances any argument or presents any evidence at any point contrary to the statements made in the proffer session, the government is permitted to introduce those statements at trial to rebut that information. *See Krilich*, 159 F.3d at 1025. This conclusion is wholly supported by the case law discussed above. And given the wide-ranging nature of Peavler's proffer statements, this will be a potential issue throughout trial.

C. If the evidence at trial demonstrates that Peavler was not truthful and complete during the proffer session, the Proffer Agreement is deemed void due to Peavler's breach, and the government can introduce his statements at trial.

By executing the Proffer Agreement, Peavler committed to answering all questions "truthfully and completely." *See* Gov. Ex. A. at 1. This, in short, is a condition precedent to any agreement being formed and for both sides being bound by the promises, limitations, and obligations contained in the Proffer Agreement. When a proffer agreement, or "contract", obligates a defendant to give "statements that [are] entirely truthful, . . . the government is well within its rights to consider the proffer agreement has been voided" if it turns out that the

defendant was not completely truthful. *Lopez*, 222 F.3d at 434 (finding that if the government establishes by a preponderance of the evidence that the defendant did not answer truthfully the questions in the proffer, then the agreement is voided).

In *United States v. Coleman*, the Seventh Circuit noted that a proffer agreement was violated and, therefore, "unenforceable" when the defendant violated the terms of the agreement by presenting "contradictory testimony" to the jury than that given in the proffer. 149 F.3d 674, 678 (7th Cir. 1998). In that case the defendant changed his story about the amount of cocaine attributed to him, and, accordingly, the proffer agreement, which required him to be truthful in the proffer, was deemed unenforceable. *Id.*; *see also United States v. Delzer*, No. 08-CR-138-BBC, 2010 WL 3395670, at *4 (W.D. Wis. Aug. 13, 2010) (noting that cases in this Circuit have held that "because defendants breached their proffer agreements by providing materially false information and withholding material information, the government could use their statements against them at trial"), *report and recommendation adopted in part sub nom. United States v. Stadfeld*, No. 08-CR-138-BBC, 2010 WL 3363396 (W.D. Wis. Aug. 25, 2010), *aff'd*, 689 F.3d 705 (7th Cir. 2012).

If the evidence presented at trial demonstrates that Peavler was not completely truthful in the proffer session, the Proffer Agreement will be voided and is no longer enforceable. If that is the case, the government is no longer bound by the Proffer Agreement and should be permitted to use any statements from the proffer session for any admissible purpose.

IV. Recommended Trial Procedure

The government respectfully recommends that the Court adopt the following procedure at trial to address disputes concerning the admissibility of Peavler's proffer statement. Should the government believe that Peavler has triggered the waiver provision in his Proffer Agreement in

his opening statement, during cross-examination of a government witnesses, or at any other point, government counsel will inform the Court of its intent to offer appropriate portions of Peavler's proffer statement. At that stage, the Court should consider whether an inconsistency exists that permits the proffer's admission (i.e., "if the truth of one implies the falsity of the other," *Krilich*, 159 F.3d at 1025-26), or whether the defense's position or evidence does not rise to the level of an inconsistency.

V. Conclusion

For the foregoing reasons, the government's motion should be granted contingent on the defendant violating the Proffer Agreement or testifying at trial. This result is not only consistent with contract law but also is in the interests of justice. *See Krilich*, 159 F.3d at 1025 ("A conditional waiver of the kind Krilich signed tends to keep the defendant honest, which makes the proffer device more useful to the both sides. For this strategy to work the conditional waiver must be enforceable; its effect depends on making deceit *costly*.") (emphasis in original); *Dortch*, 5 F.3d at 1069 ("holding the defendant to the terms of the proffer letter fosters another laudable policy—encouraging defendants to tell the truth during both plea negotiations and subsequent trials").

Respectfully submitted,

ZACHARY A. MYERS
United States Attorney

By: s/ Kyle Sawa
Kyle Sawa
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on **December 30, 2021**, a copy of the Government's Motion in Limine Regarding Use of Defendant's Proffer Statements was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: S/Kyle Sawa

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U.S. Department of Justice

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Bond Building
Washington, D.C. 20530

August 26, 2019

Via Electronic Mail

Sergio E. Acosta
Douglas B. Paul
Akerman LLP
71 South Wacker Drive, 47th Floor
Chicago, IL 60606

Re: Proffer of Bobby Peavler

Dear Counsel:

You have indicated that your client Bobby Peavler (hereinafter "Client") is interested in providing information to the government. With respect to the meeting between the government, Client, and yourself on August 26, 2019 (hereinafter "the meeting"), the government will be represented by individuals from the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office, Southern District of Indiana. This terms of this letter do not bind any office or component of the U.S. Department of Justice other than those identified in the preceding sentence. The following terms and conditions apply to the meeting:

(1) **THIS IS NOT A COOPERATION AGREEMENT**. Client has agreed to provide information to the government, and to respond to questions truthfully and completely. By receiving Client's proffer, the government does not agree to make any motion on Client's behalf or to enter into a cooperation agreement, plea agreement, immunity agreement or non-prosecution agreement with Client. The government makes no representation about the likelihood that any such agreement will be reached in connection with this meeting.

(2) Should Client be prosecuted, no statements made by Client during the meeting will be used against Client in the government's case-in-chief at trial or for purposes of sentencing, except as provided below.

(3) The government may use any statement made or information provided by Client, or on Client's behalf, in a prosecution for false statements, perjury, or obstruction of justice, premised on statements or actions during the meeting. The government may also use any such statement or information at sentencing in support of an argument that Client failed to provide truthful or complete information during the meeting, and, accordingly: (a) that under the United States Sentencing Guidelines, Client is not entitled to a downward adjustment for acceptance of responsibility pursuant to Section 3E1.1, or should receive an upward adjustment for obstruction

of justice pursuant to Section 3C1.1; and (b) that Client's conduct at the meeting is a relevant factor under 18 U.S.C. § 3553(a).

(4) The government may make derivative use of any statements made or other information provided by Client during the meeting. Therefore, the government may pursue any investigative leads obtained directly or indirectly from such statements and information and may use the evidence or information subsequently obtained therefrom against Client in any manner and in any proceeding.

(5) In any proceeding, including sentencing, the government may use Client's statements and any information provided by Client during or in connection with the meeting to cross-examine Client, to rebut any evidence or arguments offered on Client's behalf, or to address any issues or questions raised by a court on its own initiative.

(6) Neither this agreement nor the meeting constitutes a plea discussion or an attempt to initiate plea discussions. In the event this agreement or the meeting is later construed to constitute a plea discussion or an attempt to initiate plea discussions, Client knowingly and voluntarily waives any right Client might have under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), or otherwise, to prohibit the use against Client of statements made or information provided during the meeting.

(7) The government reserves the right to argue that neither this agreement nor the meeting constitutes the timely provision of complete information to the government concerning Client's involvement in an offense, within the meaning of Section 3El.l(b) of the Sentencing Guidelines.

(8) If and when required to do so by a court, the government may disclose to the Probation Office or the court any statements and information provided by Client during the meeting.

(9) The government may disclose the fact of the meeting or the information provided by Client during the meeting to the extent the government determines in its sole discretion that disclosure would be in furtherance of its discharge of its duties and responsibilities or is otherwise required by law. Such disclosure includes disclosure to a local, state, federal, or foreign government office or agency, including but not limited to another prosecutor's office, if the recipient of the information agrees to abide by the relevant terms of this agreement.

(10) The terms and conditions set forth in this agreement extend, if applicable, to the continuation of the meeting on the dates that appear below.

(11) It is understood that this agreement is limited to the statements made by Client at the meeting and does not apply to any oral, written or recorded statements made by Client at any other time.

(12) This document embodies the entirety of the agreement between the government and Client to provide information and evidence. No other promises, agreements or understandings

exist between Client and the government regarding Client's provision of information or evidence to the government.

(13) Client and Client's attorney acknowledge that they have read, fully discussed and understand every paragraph and clause in this document and the consequences thereof.

Dated: 8/26/2019

At: Indianapolis, IN

Robert A. Zink
Acting Chief, Fraud Section

By: _____

L. Rush Atkinson
Kyle W. Maurer
Trial Attorneys
Securities & Financial Fraud Unit
Fraud Section, Criminal Division

Steven D. DeBrota
Deputy Chief, General Crimes Unit
Nicholas J. Linder
Assistant United States Attorney
United States Attorney's Office
Southern District of Indiana

_____
Bobby Peavler
CLIENT

_____
Sergio A. Acosta
Counsel for Client

Dates of Continuation	Initials of counsel, Client and government attorney
_____	_____ _____ _____
_____	_____ _____ _____

FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/07/2019

On August 26, 2019, Bobby Peavler ("Peavler") was interviewed at the United States Attorney's Office in Indianapolis. Present on Peavler's behalf were attorneys Sergio Acosta, Doug Paul, and Sarah Wong, of Akerman LLP. Present on behalf of the government were DOJ Attorneys L. Rush Atkinson and Kyle Maurer, AUSA Nick Linder, FBI Special Agents Victoria Madtson and Joseph Weston, and United States Postal Inspector Anna Hallstrom. Before the questioning began, Peavler and his attorney signed the attached proffer agreement.

AUSA Linder explained to Peavler that the interview was voluntary and he was free to take a break at any time, to speak with his attorneys or for any other reason. AUSA Linder reminded Peavler that he must be truthful during the interview, which means not making anything up or leaving anything out. AUSA Linder informed Peavler that he must provide complete answers and that leaving something out is the equivalent to lying. Lastly, AUSA Linder reminded Peavler that lying to federal Agents is a crime. Peavler acknowledged he understood AUSA Linder's instructions, after which he provided the following information:

Quality started as a subsidiary of Celadon, and its purpose was to sell used equipment. As Quality grew, it developed a leasing portfolio which also grew. Quality became a big business. Peavler cited the following areas as affecting Quality's business and the trucking industry in the spring of 2016:

- Element Financial ("Element") slowed funding to Quality. Quality sold its leases to Element but continued to service the leases for Element. Quality needed the funding from Element to buy equipment and seat drivers.
- The trucking industry experienced a slowdown.
- Quality's fleet was aging.
- There were engine problems with the 2012 ProStar MaxxForce trucks and similar trucks that were in Quality's fleet.

Investigation on 08/26/2019 at Indianapolis, Indiana, United States (In Person)

File # 318A-IP-2213073 Date drafted 08/27/2019

by Victoria G. Madtson, Joseph P. Weston

Peavler was aware of a general downturn in the trucking industry and demand, which led to unseated trucks. There was also a shortage of drivers, which got worse over time. In 2016, there were a large number of inactive trucks at Quality.

Peavler was aware of a strategy at Celadon/Quality to dispose of unused trucks. The strategy was spearheaded by Eric Meek ("Meek"), Danny Williams ("Williams"), and Paul Will ("Will"), and these three people worked with Stoops and other dealers in the process.

Peavler was present for high level meetings with Meek, Williams, and Will where the issue of disposing of the trucks was discussed.

Meek was President and Chief Financial Officer (CFO) of Celadon at one point. Quality was Meek's baby because he started it. Before Quality was created, Celadon sold its used equipment at auctions. After Quality was created, Quality sold Celadon's used equipment. Williams was Quality's top salesman. Quality grew fast after the leasing business started. Quality originally leased equipment to about 80 Owner/Operators (O/O) who drove for Celadon. Then Celadon's O/O count grew to 1,000. Element was brought in to buy the leases from Quality, and the business took off from there. By 2016, Quality was a significant segment of Celadon's business.

Peavler was aware of a plan at Celadon/Quality to trade older used equipment for newer used equipment. Peavler's understanding is that if parties trade two items with one another, it's a trade. But if each party buys items from the other and cash goes back and forth, then the transaction is treated differently than a trade. Celadon/Quality treated the used truck transactions "like buying and selling" because cash was going back and forth.

The short seller article raised questions about the used truck transactions. Up to that point, Peavler had never looked at the relevant accounting guidance. After the short seller article came out, Peavler asked Steve Boyer ("Boyer") to look at the accounting guidance. Boyer and Peavler determined the used truck transactions were Monetary Transactions. Peavler recalls looking at ASC 945.

Peavler knew the deal with Stoops involved trucks going out and coming in. Peavler had the most knowledge about the fourth and final transaction

with Stoops.

Fourth Stoops Transaction

Celadon was having financial difficulties and cash was tight. Celadon's bank covenants related to the Debt-to-EBITDAR ratio had been tight for awhile. The quarter ending September 30, 2016 was going to be close again.

During the first or second week of September 2016, Meek came to Peavler and told him that Williams was working with Stoops. Meek said Stoops could help Celadon/Quality out with its cash situation, through the timing of the payments. Timing mattered because the bank covenant compliance was calculated at the end of the quarter. The following people were aware of the structuring of payments:

- Meek
- Williams
- Peavler
- Will
- The Finance Group
- The Accounting Group

Stoops was going to fund $25 million to Celadon/Quality before the end of the quarter. Peavler was involved with developing the terms of the payment structuring arrangement.

In early September 2016, Peavler had a discussion with Jason Grawe ("Grawe") from Stoops. Stoops was concerned that Celadon wasn't going to pay Stoops in early October 2016. Stoops was aware of Celadon's tight cash situation. Stoops also knew Celadon needed a "cushion" for its bank covenants.

In late September 2016, Peavler received the first draft of the purchase agreement between Celadon/Quality and Stoops. Peavler had a discussion with Will, during which Peavler explained to Will that Stoops wanted something signed because it was worried about being paid in October. Will asked Peavler whether Celadon needed the cash, to which Peavler said "yes." Will replied something to the effect of, "we need to work through it." Peavler took Will's comment as an instruction to do what is needed. Peavler never gave the original purchase agreement to Will.

The purchase agreement was subsequently signed.

When Peavler was considering whether the used truck deal was a trade, he looked at whether the values were fair. If it was a trade, the values are tied to one another. He thought the purchases and sales were at fair value. Peavler asked Williams if Quality had a gain on the equipment, because he was worried about facetious gains.

The purchase agreement was signed and Stoops wired money to Celadon/Quality on September 29, 2016. The interviewers asked Peavler whether on September 30, 2016, after Celadon/Quality received the money from Stoops, Quality was obligated to buy equipment from Stoops. Peavler responded "yes."

Peavler acknowledged that the $27 million owed to Stoops on October 3, 2016 was not reported in Celadon's 10-Q. Peavler also acknowledged that he signed the 10-Q as Celadon's CFO. Peavler assumed that BKD saw Quality's purchase of equipment from Stoops after the quarter-end. Now, Peavler thinks that the $27 million owed to Stoops should have been disclosed, but it was not a deliberate omission.

Peavler did not have discussions with BKD for the third quarter. Peavler knows from his past experience that BKD goes through a procedure after quarter-end. Peavler assumes that BKD went through Celadon's cash payments after quarter-end.

Peavler acknowledged that Celadon/Quality took the benefit of cash from Stoops and reported to investors that it met its covenants. Peavler also acknowledged that Celadon reported on the third quarter investor call that it met its debt covenants. Peavler doesn't recall any specifics but he knows a question about the debt covenants was asked.

Peavler acknowledged that if Celadon had not taken the $30.4 million from Stoops, it would have been over the 4-to-1 ratio. Peavler does not dispute that the ratio would have been 4.01.

Peavler acknowledged that the purpose of timing the transaction that way was to have a cushion for the debt covenant. Looking back now, investors wanted to know about the $27 million. Peavler feels he should have looked at the 10-Q more stringently. The Celadon accounting and finance groups knew about the timing of the payments with Stoops.

After the first short seller article, BKD started asking questions. When the article first came out, Peavler talked to Williams and Meek. The accounting treatment didn't concern Peavler much, but the values concerned him. Peavler had Boyer look at the values and the accounting treatment.

Celadon's audit committee chairman, Bob Long ("Long"), had a discussion with BKD. Long asked Peavler to look at the issue more.

BKD asked Celadon to certify that the purchases and sales with Stoops were not inter-related. Peavler acknowledged that Quality paid "a very high amount" for used trucks. DOJ Attorney Atkinson read aloud, "The Stoops sales and purchases transactions were conducted at arm's length and the prices at which the Company bought and sold vehicles reflect fair market values at the time of the transactions. Each transaction was discreet in nature and none were interdependent. There are no undisclosed side agreements related to these transactions." Peavler acknowledged that the purchases and sales were related, and there was a commitment back and forth.

Peavler discussed BKD's proposed certification language with Will. Peavler went through the Non-Monetary Transaction guidance, which discussed the fair value of what was given up. On the day the rep letter to BKD was signed, Peavler had a call with Greg Rexing ("Rexing") and others from BKD. The BKD team said it had gone through the Stoops transactions and didn't see any linkage.

Peavler did not agree with the first version of the rep letter, which said Celadon had valuations from an independent third party. On the second version of the rep letter, Peavler viewed the prices as "not interdependent." Williams and Stoops each set their own values. Peavler didn't think BKD was concerned about the timing of the transactions. BKD went through every transaction with Boyer.

Peavler is not aware of anyone from Celadon or Quality ever telling BKD that the Stoops transaction was a trade.

Peavler did not read the Management Representation Letter carefully. Peavler acknowledged to the interviewers that he inaccurately certified to the auditors.

DOJ Attorney Atkinson read aloud an excerpt from the Management

Representation Letter, as follows, "We have disclosed any significant unusual transactions the Company has entered into during the period, including the nature, terms and business purpose of those transactions and whether such transactions involved related parties." Peavler acknowledged to the interviewers that the Stoops deal was unusual. He also acknowledged that multiple certification statements were not truthful.

Peavler acknowledged the following were true, as of the September 30, 2016 quarter-end:

- Celadon had not disclosed all related transactions.
- Celadon had not disclosed all significant transactions.
- Celadon had still not disclosed the purchase agreement with Stoops as of the December 31, 2016 quarter-end.
- Celadon certified that each transaction was discrete in nature, but Peavler acknowledged that one side of the transaction was conditional on the other.

Peavler signed the certification to BKD. Celadon needed to get its 10-Q out. Peavler thinks he should have asked Rexing what he meant. (No further explanation)

Auditor management representation letters are verbatim and boilerplate. Peavler looked at the end of the representation letter for something new. Peavler acknowledged that he knew the auditors wanted to know about major contracts.

Peavler signed the representation letter and the 10-Q for September 30, 2016 went out. Mike Wolfe ("Wolfe") from BKD became more involved. BKD wanted to know if the purchases and sales with Stoops were linked.

In mid-February 2017, Peavler, Will, and possibly Long were meeting with Rexing. They were talking about purchases and sales. Peavler thought Rexing knew the sales and purchases were linked. Peavler or Will said during this meeting something to the effect of, "they're tied together, they wouldn't agree to buy ours if we didn't buy theirs."

BKD started asking for e-mails. Long wanted Peavler to go through e-mails with Meek, Williams, and Leslie Tarble ("Tarble") to see if there was anything supporting Celadon's position. Peavler asked Meek, Williams, and Tarble if they had any e-mails supporting Celadon's position regarding the

transactions. Meek and Tarble said they didn't have anything. Williams said he could go back and look to see if he had anything. Williams said most of his e-mails get deleted.

Williams started sending Peavler e-mails. Some of the e-mails were not related to the negotiation process, so Peavler deemed the e-mails "not supportive." Peavler realized Williams did not have a lot of supportive e-mails. Peavler asked Mike Gabbei ("Gabbei"), Celadon's Chief Information Officer (CIO), if he could restore Williams' e-mail. Peavler thinks Gabbei restored a substantial amount of Williams' account. Chase Welsh ("Welsh") and Scott Selm ("Selm"), with Celadon's Legal and Internal Audit departments, respectively, went through the restored e-mails with Williams and then by themselves.

When Williams sent e-mails to Peavler prior to Peavler involving Gabbei, Peavler told Williams something to the effect of "those are not supportive or relevant," and either "we don't need it" or "get rid of it." Williams did not have any e-mails prior to December 2016, which is why Peavler got Gabbei involved. Peavler does not recall saying, "we don't need to give BKD more than they asked for."

Peavler doesn't recall discussions about "O/A" while he was at Celadon. The only conversation about the topic was during the time period when Boyer and Peavler were looking at the accounting treatment for the Stoops transactions. Peavler asked Williams if he (Williams) could have sold trucks elsewhere for the prices at which he sold to Stoops. Williams said, "yes," but that it would've taken more time. When Peavler asked Williams why the prices were higher with Stoops, Williams said something to the effect of, "they (Stoops) had their margin on the back end." Boyer looked at Truck Paper and found some prices that matched the Stoops transactions.

The interviewers asked Peavler how he reacted to the segment of the short seller's article which questioned why trucks were on the market for less than what Quality had sold them to Stoops for. Peavler said he thought there was a possibility "something was happening." Peavler questioned whether he could trust Williams or Stoops, so he relied on the accounting guidance. Peavler told Long that they should get a fair market value (FMV) assessment on both sides. Long said something to the effect of, "let's just see what BKD comes back with." Peavler never went back to BKD to tell them he could

not stand by the certification he made to them.

April 2017 Meeting

Peavler was involved with the preparation session for the April 2017 meeting with BKD. The purpose of the preparation session was to make sure everyone was on the same page. Peavler doesn't recall advising Williams and Tarble not to use the word "trade."

Peavler recalls Will and Williams walking and talking together around Celadon's building, but Peavler did not join the two men. Peavler occasionally walked with Will, just the two of them.

During the April 2017 meeting with BKD, Williams referred to the purchase agreement and BKD did not know what he was talking about. Long had to get the purchase agreement for BKD. Peavler doesn't know where Long obtained the purchase agreement. Peavler didn't have the final, signed purchase agreement before Williams sent it to him (Peavler). After Peavler received the signed purchase agreement from Williams, Meek came to Peavler and said something to the effect of, "I don't think we should send it to BKD. It will just make things worse." Peavler replied to Meek, "I think we should give it to them." Meek's statement caused concern for Peavler. Meek had never before said something about not giving stuff to BKD. In hindsight, Peavler thinks he personally did not ask enough questions. At the time Meek made the statement in April 2017 about not giving the purchase agreement to BKD, Peavler recognized it as a red flag and concerning statement. Meek is a smooth-talking person.

During Peavler's e-mail review with Williams, Williams ran the searches and Peavler told him which terms to use. Peavler had Williams search for Stoops, Truck Country, and names such as McCoy.

[Agent note: At this point in the interview, a short break was taken.]

Document #1

[Agent note: Peavler was shown an e-mail exchange (with attachment) dated May 17, 2016 with subject, "Re: Navistar – Cummins Re-power," which is attached to this FD-302 as Document #1.]

If Peavler needed a truck valuation, he went to Meek or Williams. The

interviewers directed Peavler to the e-mail near the bottom of page two of Document #1, sent at 4:56 p.m. by Jake Rinehart ("Rinehart"). Rinehart originally worked for Celadon's finance department and then its maintenance department, before moving over to Quality's maintenance group.

The interviewers directed Peavler to Meek's reply at the top of page two of Document #1, sent at 5:03 p.m., in which Meek wrote "I would anticipate we would do 500-750 units of [sic] we can get the economics to work." Peavler confirmed that 500 to 750 of the 2012 ProStar units would match his best guess as to what was in inventory. He knew they had hundreds.

The interviewers directed Peavler to Williams' reply at the bottom of page one of Document #1, in which Williams wrote, "We should be able to average about $7,500 per engine for the Maxxforce engine. Leslie and her team will work through a model, but from a pure market perspective I think it would increase the value to roughly $40K (up $25K)." Peavler acknowledged that Williams was stating that $15,000 per unit was the market value of the MaxxForce trucks. The people on this chain include Tarble, Williams, Meek, Peavler, Chad Hoffman ("Hoffman"), Rinehart, and Will. Hoffman was Vice President of Operations at Celadon and oversaw the maintenance group.

The interviewers directed Peavler to the spreadsheet attached to Tarble's reply at the top of page one of Document #1. In the spreadsheet under "Assumptions," Tarble wrote "Market Value with MaxxForce $15,000." Peavler acknowledged that Tarble was notifying the "C-Suite" that Quality had 500 to 750 trucks worth $15,000 each.

Peavler relied on a cash flow analysis for the leased assets. In order to calculate the carrying value (CV) of the unleased units, he looked at the market. Boyer went through the list of units and compared to Truck Paper to see what similar units were selling for, to support the 6/30 values. Williams also signed off on the values.

No one besides Boyer was looking at the values. Boyer asked Hoffman, Meek, and Williams for the asset classification information (e.g. leasing asset, inactive asset, etc.).

Document #2

[Agent note: Peavler was shown an e-mail exchange dated June 8, 2016 with

subject, "Re: Outline of Assets to Dispose of between now and 12/31," which is attached to this FD-302 as Document #2.]

The interviewers directed Peavler to Meek's original e-mail in the exchange, in which Meek wrote, "Kathryn / Danny / Jake- Any chance you could go through and build a detailed list of all the assets we want to dispose of between now and 12/31. I want to make sure we are all on the exact same page of what assets we want Quality to focus on selling / leasing. I believe in total between trucks and trailers we should be able to reduce our debt / equipment by around $70-80M (not including holding around $50M long term with Quality Equipment Leasing) and around $1-1.2M in monthly depreciation expense." Peavler acknowledged that Meek was talking about reducing the size of Quality's portfolio and reducing the inactive truck count. The decision to grow or shrink the Quality portfolio was made by Will, Meek, and Williams, with Meek having the most input of the three. Peavler acknowledged that Document #2 discussed shrinking the Quality fleet, not refreshing the fleet.

The interviewers directed Peavler to Williams' reply in Document #2, in which he wrote, "Sounds like a plan. We are getting the open ProStars, owned reefers, and all 2014 dry vans together now to send out ASAP." Peavler confirmed that "open ProStars" meant unseated trucks.

Document #3

[Agent note: Peavler was shown an e-mail exchange dated July 1, 2016 with subject, "Re: Updated Budget & Cash Flow Forecast," which is attached to this FD-302 as Document #3.]

Greg Burke ("Burke") worked for Element and oversaw the Element side of the Quality-Element relationship. Burke was Element's analytical guy, not the decision maker. Peavler spoke with Burke occasionally.

The interviewers directed Peavler to Burke's statement on page one of Document #3, which read, "Thank you for all the work you are doing in preparation for the meeting on the 7th." Peavler explained to the interviewers that Element's management group had a monthly meeting with Quality's management group, made up of Williams, Tarble, and Meek. At these meetings, they went through Element's portfolio, which was managed by Quality.

The interviewers directed Peavler to Burke's statement near the bottom of page one of Document #3, which read, "I think it is very important to show Celadon's financials and how you calculate your covenant compliance and how tight it will be going forward." Peavler explained to the interviewers that at this point in time, he was aware of Celadon's debt covenant compliance issue. In December of 2015, Celadon had started being tight on its covenants. Celadon started having conversations with Andy Crask ("Crask") and Jen Brown ("Brown"), both from Bank of America. Celadon also began providing forecasts to Crask and Brown.

If Celadon did not meet its debt covenants, it would ask Bank of America for a waiver and pay a fee for that waiver. Celadon would also have had to report its covenant compliance violation to the market, which would have a negative market impact. Peavler had not personally been through the violated covenant compliance process before. Will was more concerned than anyone about how the market would react to Celadon violating its covenant. Will often asked questions such as, "What would be the [market] impact...?" when evaluating options. Will evaluated shareholder impact of decisions and whether to take certain actions. By the time of Document #3, Quality had exhausted its reserve account and was paying Element on top of the reserve.

Peavler opined that it was a good business decision to start Quality, but ramping up so quickly was not a good idea. Meek and Williams were "stuck in" on Quality's business model to ramp up the fleet. Peavler surmises that Meek and Williams did not want to admit that they were wrong.

Peavler hasn't seen the 8-K about write-downs for 19th Capital, which occurred in the last few months.

Document #4

[Agent note: Peavler was shown an e-mail exchange dated July 30, 2016 with subject, "Re: Quality Board Discussion," which is attached to this FD-302 as Document #4.]

The interviewers directed Peavler to Wouters' original e-mail in Document #4, which read, "Danny/Leslie – There is a time slot for a discussion on Quality's strategy for this quarter's board meeting. Michael wanted to make sure you guys were there. Board agenda attached." Michael Miller was the lead outside Director. This was approximately the second time Quality made a

presentation to the Board of Directors (BOD). The first time Quality presented was when Quality first began as an entity. The Celadon BOD meetings were short.

The interviewers directed Peavler to Will's response in Document #4, which read, "I think we should put together a slide or two to show the great progress that has been achieved by global inactive truck count going down, trade transactions that have reduced the age of the fleet with better lease trucks, reduction in inactive trucks and more late model equipment in the 1200/700 deal while reducing debt on the Celadon side as well as the profitability level improvement while bringing on additional services that have a significant p/l upside." By "global inactive truck count," Peavler thinks Will meant Quality's and Element's portfolios combined. By "trade transactions," Peavler thinks Will was referring to the transaction Williams had already done with Stoops. There were no other trade transactions besides the ones with Stoops. Will and others at Celadon/Quality used the word "trade" in discussions about the Stoops deals.

At the time of the Stoops deals, Peavler thought BKD knew the trucks were being bought and sold at the same time with the same dealer. When Will used the term "1200/700 deal" in Document #4, Peavler thinks he was referring to the deal Will, Meek, and Williams were trying to work out with Daimler to refresh Quality's fleet. The deal did not come to fruition. Peavler is not aware of a connection between the proposed Daimler deal and the executed Stoops deal.

Document #5

[Agent note: Peavler was shown an e-mail exchange dated August 29, 2016 with subject, "Re: Unseated Assets," which is attached to this FD-302 as Document #5.]

The interviewers directed Peavler to his original e-mail in Document #5, which read in part, "Jake, Do you have some time this morning to go over unseated assets?" Peavler explained to the interviewers that Quality was still working through its high unseated truck count at this time. Peavler was asking Rinehart to meet to go over the classification of these unseated trucks on Celadon's balance sheet. The classification affects valuation. For example, equipment held for resale is valued based on FMV whereas equipment

held for lease is valued differently. Rexing, from BKD, wanted to discuss the classification of Celadon's assets, whether short-term or long-term, to make sure assets were in the right buckets.

Document #6

[Agent note: Peavler was shown an e-mail exchange dated August 29, 2016 with subject, "Re: Fw: Element Trailers," which is attached to this FD-302 as Document #6.]

The interviewers directed Peavler to his e-mail to Will and Meek at 12:35 p.m. in Document #6, which read in part, "Below is the breakout of the Element Trailers. I want to be sure we are on the same page with Element as I think Greg is anticipating us buying them out today." Peavler explained to the interviewers that Element's portfolio included flatbed trailers that were leased to a third party but became unused. Element wanted Quality to take the trailers back. Meek's flatbed division was using some of the trailers. Referencing the later part of his 12:35 p.m. e-mail, he stated that $11 million was the amount for which Quality would have to buy them back from Element. Peavler acknowledged that on August 29, 2016, Quality was thinking of spending $11 million in cash that it did not have.

The interviewers directed Peavler to Meek's reply at 1:39 p.m. in Document #6, which read in part, "I am fine if we go ahead and buy them. My main concern is if Element isn't going to give us any cash in the latest proposal I am nervous on our debt and how we can address that....especially knowing we can't easily sell these based on values." Peavler explained to the interviewers that the last part of Meek's statement was referencing that Quality could not resell the trailers at the amount at which it bought them back from Element. Meek was conceding that Quality was about to overpay for trailers.

Peavler acknowledged that accounting rules state that if you are going to sell an asset, you have to put it on the books at FMV. Peavler also acknowledged that Meek's suggestion to put the trailers on Celadon's books at above-FMV was improper.

Element had threatened to stop funding or sue Celadon under the Perfect Pay scenario, so either Meek or Will agreed to buy some assets back from Element.

The interviewers asked Peavler why no losses had been reported by Celadon despite the previously-discussed fall in the used truck market. Peavler stated that looking back, losses probably should have been reported. There was no allowance for losses in the fleet. Celadon's size as a company is such that a $10 million loss could be significant, but truck market analysts know the market fluctuates. Peavler added that a few other trucking companies took a large impairment without much impact to their stock price.

Peavler does not recall discussions taking place at Celadon about taking losses, reserves, or impairments. There were discussions about "are we in the reasonable range?" Peavler acknowledged to the interviewers that Celadon was aggressive on valuations, in that Celadon took the high values. Meek and Will were all over the place on what the plan was regarding the inactive trucks. There was never a plan to lease out 750 inactive trucks, but it was always the overall goal to lease out all the inactive trucks.

The C-Suite was aware that other companies were taking losses. Will said to lease or sell.

The Joint Venture (JV) was closing soon after August 2016 and Peavler had a lot going on. Peavler acknowledged to the interviewers that an upcoming transaction is not supposed to affect the accounting beforehand. Peavler recognized that there was an incentive to kick losses down the road. Meek's ego was such that he did not want to take a huge hit.

Peavler discussed with Will about taking an impairment charge when they did the JV, because the market had fallen. However, no impairment was ultimately taken. The original purpose of the JV was not to avoid taking a loss. When Peavler and Boyer started looking at the accounting guidance for contributions to a JV, they found that if it was not a true JV, assets have to be put in at FMV. The $15,000 per truck value from Williams was in Peavler's subconscious along with the market falling.

A $20 million to $30 million write-down at Quality would not have hurt Quality's operations, excluding impact to investors. The Element dynamic surrounding Perfect Pay was hurting Quality.

The JV closed on December 31, 2016. Peavler talked about revaluation of the total JV.

Fourth Stoops Transaction (re-visited)

Peavler and Meek had a memorable conversation in the doorway of Meek's office. About a month or two prior to this conversation, Meek and Peavler had been talking about not spending money on things like truck maintenance. Meek was trying to come up with funding or financing ideas.

The day of the doorway conversation, Meek either called Peavler down or Peavler was already near his office. The conversation was just between Meek and Peavler. Meek said that Williams was working on another deal with Stoops that could help with cash. In the prior deals with Stoops, Quality had paid Stoops before Stoops paid Quality. During this doorway conversation, Peavler asked Meek if he meant the timing of the cash, and Meek said yes.

After the doorway conversation, Peavler talked to Williams, who said something to the effect of, "Stoops can help us out with our cash situation." This meant that Celadon would have enough cash at quarter-end to meet its bank debt covenants.

Peavler was then introduced to Grawe, and the two men had a telephone call. Grawe asked what Celadon needed or wanted. Peavler told him something to the effect of, "I know what the timing was before but we would like to change it." Peavler also said something to the effect of, "it will help us out with cash flow at the end of the quarter." Peavler thinks he mentioned Celadon's bank covenants. Grawe said he would think about it. At the time of this initial telephone call, Peavler did not know where Celadon's cash position would be so he did not propose any amounts.

After Peavler's first telephone call with Grawe, he spoke with Meek, Williams, and Will, conveying that Stoops was going to discuss the proposal internally.

Document #7

[Agent note: Peavler was shown two related e-mail exchanges, both dated September 9, 2016. The first e-mail had subject "Re: Open Items Listing" and was sent at 11:01 a.m. The second e-mail had subject, "FW: Open Items Listing", was sent at 10:15 a.m., and included an attached spreadsheet titled "Celadon Group, Inc., Open Items Listing, 6.30.2016". The two e-mail exchanges are collectively attached to this FD-302 as Document #7.]

Peavler reviewed Document #7 and noted that Nickie Redick ("Redick") from BKD forwarded Peavler an e-mail from Kyle Dillon ("Dillon"), also from BKD. In turn, Peavler forwarded the e-mail to others with the comment, in part, "Let's make sure we get everything they need today to clear these items." The interviewers directed Peavler to Boyer's response, which read, "I know we need help on these items below. Any e-mails or anything showing stoops [sic] is going to buy the $32M of additional assets and support that Element is going to buy $25M of assets." Peavler explained that he was referring to the transactions at the end of September 2016. This is part of the balance sheet classification issue, namely equipment held for resale. Celadon had to prove to BKD that they were going to sell the equipment because it was such a big number. The general parameters of the fourth Stoops transaction were already sketched out by September 9, 2016.

Peavler recalls meeting Grawe in person. Grawe was concerned with the timing and ensuring that Stoops would get paid. Grawe asked about invoices, to which Peavler told him to prepare them like normal. Grawe had questions about Celadon's 10-Q that was coming out and Celadon's creditworthiness. Grawe wanted to make sure Peavler, as Celadon's CFO, was okay with the deal structure. Grawe also wanted to make sure Celadon would not "stiff" Stoops.

The structure of the fourth Stoops transaction was that Stoops would fund first but Celadon had to buy Stoops' trucks afterward. This was in the top three transactions dollar-wise that quarter at Celadon. Celadon and Stoops signed an agreement that Celadon would buy $27 million of trucks from Stoops on October 3, 2016. Peavler believes there should have been a footnote about the October 3, 2016, purchase in Celadon's 10-Q.

Investors sometimes asked about commitments and what would be happening in the future. Peavler acknowledged that Celadon did not report one of its largest commitments for the September 2016 10-Q. The following people were aware of the October 3, 2016 commitment: Peavler, Williams, Meek, Tarble, Wouters, Boyer, and Will.

In response to BKD's open items list, Wouters or Boyer gave BKD a list of Celadon's open commitments. Celadon sometimes had a call with BKD at the close of the quarter, but not every quarter. Peavler cannot recall if Celadon had a call with BKD at the September 30, 2016 quarter-end. Peavler does not recall telling BKD about the $11 million trailer re-purchase.

Peavler talked to Rexing when Rexing had concerns. Peavler understands that BKD relied on Celadon's representations and was not there to question or catch errors or misstatements.

Document #8

[Agent note: Peavler was shown a three-page document titled "FORM OF COMPLIANCE CERTIFICATE." The document is attached to this FD-302 as Document #8.]

Peavler reviewed Document #8 and stated that he signed this Covenant Compliance Certificate. When they referred to "cash" at Celadon, they were referring to Celadon's line of credit balance. Actual cash coming in is used to pay down the line of credit balance. If Celadon had not structured the fourth Stoops transaction around quarter-end, the "Total Indebtedness" figure on page two of Document #8 would be higher. Peavler doesn't think the Total Indebtedness figure includes obligations and commitments like the Celadon's agreement to purchase $27 million of trucks from Stoops on October 3, 2016. No one brought up including the Stoops commitment in Total Indebtedness.

In past positions at Celadon, Peavler did not pay any money out in the last two weeks of the quarter, but he did not include the Accounts Payable balance in Total Indebtedness. Peavler thinks Celadon's internal counsel knew about the $27 million truck purchase commitment with Stoops. Peavler does not know whether Wouters spoke to Bank of America about the $27 million commitment.

Peavler did not believe the $27 million commitment needed to be reported in the Total Indebtedness number submitted to the bank.

The intent of Document #8 is to avoid getting a waiver, and to be able to tell the market that Celadon is in compliance with its debt covenants. Peavler did not want to blow the covenants. As a new CFO, he did not want Bank of America to say Celadon was out of compliance.

Peavler acknowledged that when he signed and sent Document #8 over to Bank of America, he knew the $27 million commitment to Stoops was not included in the $449,486,000 Total Indebtedness figure.

The interviewers directed Peavler to the paragraph on the first page of Document #8, which read, "1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of Borrower ended as of the above date. Such financial statements fairly present the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes." Peavler stated that Bank of America wrote this language, but he acknowledged that by signing the Certificate, he was attesting to the financial statements being GAAP compliant. Peavler acknowledged that Celadon was trying to find a loophole but he didn't think it was wrong. At the time, he thought Celadon didn't have to include the $27 million obligation to Stoops in Total Indebtedness based on his past experience only. He did not review any guidance, written or otherwise. Peavler is not a CPA.

Celadon knew its debt covenants would be tight and had conversations with Bank of America about whether Celadon would violate its debt covenants. Peavler never told Crask about Celadon's plan to space out the $27 million payment to Stoops until after quarter-end. Peavler acknowledged he did not share this information with Crask because it was Celadon's plan to meet its bank covenants. Peavler is not aware of any previous commitments in the $27 million size range that were left out of Total Indebtedness. In the past, other commitments like land were not included in Total Indebtedness.

[Agent note: A lunch break was taken from 12:30 p.m. to 1:44 p.m.]

Peavler acknowledged that what he provided to Bank of America was deceptive. In his interactions with BKD, he was focused on supporting what had previously been done and not having a re-statement.

Document #9

[Agent note: Peavler was shown an e-mail exchange dated September 28, 2016 with subject, "Fw: Bank Line Info" and bates stamp CLDN_00302350 - 356, which is attached to this FD-302 as Document #9.]

The interviewers directed Peavler to the portion of Jon McCoy's ("McCoy") e-mail at 7:02 p.m. in Document #9, which read as follows: "In addition, we have gone thru the stack of titles that your team sent over to Al. We

received titles for 507 of the 519 trades. **Below is a list of 12 trade units where we did not get the titles.**" Peavler confirmed that "trade units" was the language Celadon/Quality and Stoops used to describe the units involved in the deals. When Peavler forwarded the agreement on September 28, 2016, he read the purchase agreement quickly because it was close to quarter-end. Peavler does not recall conversations with anyone before sending the purchase agreement to Williams, which is the latest e-mail in Document #9.

Document #10

[Agent note: Peavler was shown an e-mail exchange dated September 28, 2016 with subject, "Re: Bank Line Info" and bates stamp CLDN_01847362 – 363, which is attached to this FD-302 as Document #10.]

The interviewers directed Peavler to his e-mail at the bottom of page one of Document #10, which read, in part, "Danny, I don't really like this section, just because it makes it feel more like a trade." Peavler explained to the interviewers that everything in the draft purchase agreement looked okay except the trade language. Peavler assumed the prices on the trucks being sold back and forth between Quality and Stoops were not related. Celadon had the deals booked as sales and purchases, instead of trades, because he thought it was the "more clean way to do it." If it was booked as a trade, they needed a third party valuation and there was a cost associated with that.

The interviewers directed Peavler to the same e-mail at the bottom of page one of Document #10, which read, "However, I am sure they wants [sic] something. Can they just be fine with a purchase agreement of the units we are buying from them? I don't want to make them scittish [sic] at this point though." Peavler stated to the interviewers that Williams said it was a purchase agreement. Peavler never saw the final agreement, to assess for accounting implications. Peavler did not get any accounting advice or raise any red flags. Purchase agreements get filed away after they are signed. Peavler did not like the "dependent on one another" language because he was focused on what the valuations were. Williams told Peavler that Quality would experience no gain from the transactions with Stoops. Peavler thought that on June 30th, the balance sheet had been signed off on valuations. Peavler thought the term "trade" meant values were based on each other. On the date of Document #10, he thought "dependent" meant values, not

relationship between the purchases and sales. If the language had been left in the Purchase Agreement, it would have raised questions with having to go through Celadon's legal department and a third party valuation would have been necessary. Peavler acknowledged the possible downside risk if they involved a third party for valuations.

Aside from Peavler and Williams having knowledge that the trade language was removed, Peavler mentioned it to Will, when Will asked how it turned out. Will knew there was an original agreement and he agreed there was no time to get it through legal.

Will was a lot more involved than a typical CEO. He was always in the office talking to people. Peavler occasionally talked with Will about accounting issues, since Will started at Celadon in the accounting department.

Document #11

[Agent note: Peavler was shown an e-mail exchange (with attachment) dated March 27, 2017 with subject, "memo," which is attached to this FD-302 as Document #11.]

Peavler supervised Boyer and helped review what Boyer put together in Document #11. Boyer and Peavler bounced things off each other. Peavler reviewed the attachment in Document #11, which was developed over multiple drafts. The interviewers directed Peavler to the second paragraph of the memo, on the page bates stamped CLDN_00319054, which read, in part: "The table below summarizes the amounts and timing of each sale and purchase of the transactions. Although, none of the equipment values of the purchases and sales were linked to one another, some of the transactions were negotiated on or about the same time. However, there were no oral or written agreements that would otherwise link any of the transactions." Peavler agrees with the interviewers that the last part about "no oral or written agreements" was not true. Peavler acknowledged that he read all of the memo in Document #11 at the time.

Peavler acknowledged that BKD cared about linkage between the purchases and sales. Peavler recalls Wolfe saying that he wanted to hear from operations people at Quality.

Document #12

[Agent note: Peavler was shown an e-mail exchange (with attachment) dated March 9, 2017 with subject, "Negotiation Process," which is attached to this FD-302 as Document #12.]

Peavler confirmed that the previously discussed language in Document #11 is not in Document #12. Peavler does not know who added the false statement to Document #11.

Documents #13 and #14

[Agent note: Peavler was shown two e-mail exchanges. The first e-mail exchange (with attached spreadsheet) dated December 15, 2016 with subject, "RE: Invoice <NM> from Truck Central LLC," is attached to this FD-302 as Document #13. The second e-mail exchange dated December 12, 2016 with subject, "Re: Auditor Sales Support," is attached to this FD-302 as Document #14.]

Peavler reviewed Documents #13 and #14. He stated that in Document #13, the items highlighted in yellow were from Stoops. He did not provide any comments related to Document #14.

[Agent note: At this point in the interview, a short break was taken.]

After the break, DOJ Attorney Rush Atkinson informed Peavler that the proffer would be adjourned for the day.

[Agent note: The interview began at approximately 9:35 a.m. and concluded at 2:51 p.m.]