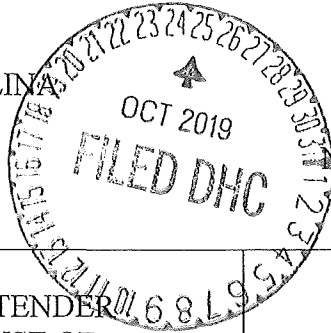


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR
19 BCS 2

IN THE MATTER OF THE TENDER
OF SURRENDER OF LICENSE OF

DAVID R. PAYNE

ORDER OF DISBARMENT

THIS MATTER coming on to be heard and being heard by the Council of the North Carolina State Bar pursuant to 27 N.C. Admin. Code, Chapter 1, Subchapter B, Section .0121(a) of the State Bar Discipline & Disability Rules upon tender of an affidavit of surrender of license executed by David R. Payne ("Payne") on October 4, 2019 and filed in the offices of the North Carolina State Bar on October 8, 2019.

Based upon the affidavit, the Council finds that Payne pled guilty to and was convicted of the federal felony offense of knowing false statement in violation of 18 U.S.C. § 1014, Count Eight of the Bill of Indictment filed against him in the United States District Court, Western District of North Carolina, Asheville Division, Docket No. 1:17-CR-73, for knowingly making false statements for the purpose of influencing an institution the accounts of which were insured by the Federal Deposit Insurance Corporation to the Bank of Asheville in connection with a loan obtained in August 2009. The Judgment and the Factual Basis are attached as Exhibit A and B. The conduct of which Payne was convicted violated the Rules of Professional Conduct, including Rule 8.4(b). Payne's conduct is grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) and (2).

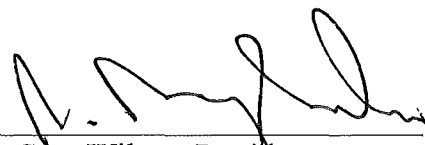
WHEREFORE, upon motion made and duly seconded, the Council enters the following Order:

1. The tender of surrender of license of David R. Payne is hereby accepted.
2. David R. Payne is hereby DISBARRED from the practice of law in North Carolina.
3. Payne is taxed with the administrative fees, consisting of the \$350.00 Grievance Committee fee and the \$750.00 DHC fee. The State Bar and Payne will bear their own costs. Payne shall pay to the State Bar the administrative fees, totaling \$1,100.00, within 30 days of service of this order.
4. Payne shall comply with the provisions of 27 N.C. Admin. Code, Chapter 1, Subchapter B, Section .0128 of the State Bar Discipline & Disability Rules. Payne shall surrender his license and permanent membership card to the Secretary of the North Carolina State Bar along with the affidavit required by § .0128 of the

State Bar Discipline & Disability Rules within ten (10) days of the entry of this order.

5. The Disciplinary Hearing Commission entered an order on March 19, 2018 that suspended Payne's law license until the conclusion of all disciplinary proceedings. For purposes of the five-year time period which must pass before Payne may apply for reinstatement pursuant to N.C. Gen. Stat. § 84-28(c) and 27 N.C. Admin. Code 1B.0129(a)(2), the effective date of this order of disbarment is made retroactive to March 19, 2018. For any other purpose, the effective date of the disbarment is the date the Council accepted the surrender pursuant to 27 N.C. Admin. Code 1B.0121(b), to wit: October 25, 2019.

Done and ordered this 25th day of October, 2019.



G. Gray Wilson, President
North Carolina State Bar

UNITED STATES DISTRICT COURT
Western District of North Carolina

UNITED STATES OF AMERICA

V.

DAVID R. PAYNE

) **JUDGMENT IN A CRIMINAL CASE**
) (For Offenses Committed On or After November 1, 1987)
)
)
) Case Number: DNCW117CR000073-001
) USM Number: 33669-058
)
) Steve P. Lindsay & Peter Crane Anderson
) Defendant's Attorney

THE DEFENDANT:

- Pled guilty to count 8.
- Pled nolo contendere to count(s) which was accepted by the court.
- Was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title and Section	Nature of Offense	Date Offense Concluded	Counts
18 U.S.C. § 1014	False Statement to a Bank	08/27/2009	8

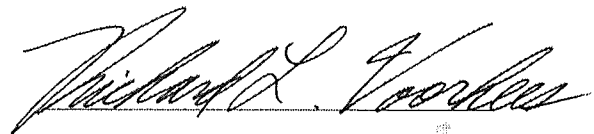
The Defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

- The defendant has been found not guilty on count(s).
- Count(s) 1-7 are dismissed on the motion of the United States.

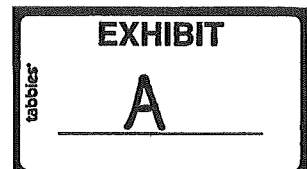
IT IS ORDERED that the Defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the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

Date of Imposition of Sentence: 10/22/2018

Signed: October 23, 2018



Richard L. Voorhees
United States District Judge



Defendant: David R. Payne
Case Number: DNCW117CR000073-001

Judgment- Page 2 of 7

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TIME SERVED.

- The Court makes the following recommendations to the Bureau of Prisons:
- The Defendant is remanded to the custody of the United States Marshal.
- The Defendant shall surrender to the United States Marshal for this District:
 - As notified by the United States Marshal.
 - At _ on _.
- The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - As notified by the United States Marshal.
 - Before 2 p.m. on _.
 - As notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

United States Marshal

By: _____
Deputy Marshal

Defendant: David R. Payne
Case Number: DNCW117CR000073-001

Judgment- Page 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

CONDITIONS OF SUPERVISION

The defendant shall comply with the mandatory conditions that have been adopted by this court.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court (unless omitted by the Court).
4. The defendant shall make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. The defendant shall cooperate in the collection of DNA as directed by the probation officer (unless omitted by the Court).

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall report to the probation office in the federal judicial district where he/she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. The defendant shall not leave the federal judicial district where he/she is authorized to reside without first getting permission from the Court or probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.
5. The defendant shall live at a place approved by the probation officer. The probation officer shall be notified in advance of any change in living arrangements (such as location and the people with whom the defendant lives).
6. The defendant shall allow the probation officer to visit him/her at any time at his/her home or elsewhere, and shall permit the probation officer to take any items prohibited by the conditions of his/her supervision that the probation officer observes.
7. The defendant shall work full time (at least 30 hours per week) at lawful employment, unless excused by the probation officer. The defendant shall notify the probation officer within 72 hours of any change regarding employment.
8. The defendant shall not communicate or interact with any persons engaged in criminal activity, and shall not communicate or interact with any person convicted of a felony unless granted permission to do so by the probation officer.
9. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential informant without the permission of the Court.
12. If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk. The probation officer may contact the person and make such notifications or confirm that the defendant has notified the person about the risk.
13. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or controlled substance or any psychoactive substances (including, but not limited to, synthetic marijuana, bath salts) that impair a person's physical or mental functioning, whether or not intended for human consumption, or any paraphernalia related to such substances, except as duly prescribed by a licensed medical practitioner.
14. The defendant shall participate in a program of testing for substance abuse if directed to do so by the probation officer. The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of the testing. If warranted, the defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity) (unless omitted by the Court).
15. The defendant shall not go to, or remain at any place where he/she knows controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.
16. The defendant shall submit his/her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), or other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant. The defendant shall warn any other occupants that such premises may be subject to searches pursuant to this condition.
17. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release in accordance with the schedule of payments of this judgment. The defendant shall notify the court of any changes in economic circumstances that might affect the ability to pay this financial obligation.
18. The defendant shall provide access to any financial information as requested by the probation officer and shall authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
19. The defendant shall not seek any extension of credit (including, but not limited to, credit card account, bank loan, personal loan) unless authorized to do so in advance by the probation officer.
20. The defendant shall support all dependents including any dependent child, or any person the defendant has been court ordered to support.
21. The defendant shall participate in transitional support services (including cognitive behavioral treatment programs) and follow the rules and regulations of such program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity). Such programs may include group sessions led by a counselor or participation in a program administered by the probation officer.
22. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

ADDITIONAL CONDITIONS:

23. The defendant shall submit to home detention, for a period of EIGHT (8) months and comply with its requirements as directed. During this time, the defendant is restricted to the defendant's residence at all times except for employment; education; religious services; medical, substance abuse or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities pre-approved by the probation officer.

Defendant: David R. Payne
Case Number: DNCW117CR000073-001

Judgment- Page 5 of 7

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
\$100.00	\$0.00	\$0.00

The determination of restitution is deferred until. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

FINE

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

- The court has determined that the defendant does not have the ability to pay interest and it is ordered that:
- The interest requirement is waived.
- The interest requirement is modified as follows:

COURT APPOINTED COUNSEL FEES

- The defendant shall pay court appointed counsel fees.
- The defendant shall pay \$0.00 towards court appointed fees.

Defendant: David R. Payne
Case Number: DNCW117CR000073-001

Judgment- Page 6 of 7

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$0.00 due immediately, balance due
 - Not later than _____
 - In accordance (C), (D) below; or
- B Payment to begin immediately (may be combined with (C), (D) below); or
- C Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$50.00 to commence 60 (E.g. 30 or 60) days after the date of this judgment; or
- D Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$ 50.00 to commence 60 (E.g. 30 or 60) days after release from imprisonment to a term of supervision. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court costs:
- The defendant shall forfeit the defendant's interest in the following property to the United States as set forth in the Consent Order document 23 entered 2/15/2018:
 - Document No.23 is incorporated into this judgment

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 210, Charlotte, NC 28202, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Defendant: David R. Payne
Case Number: DNCW117CR000073-001

Judgment- Page 7 of 7

STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of _____ months, commencing on _____.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U.S. Probation Office/Designated Witness

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA)
)
 v.) DOCKET NO.: 1:17-CR-73
)
) JOINT FACTUAL BASIS
)
 DAVID R. PAYNE)
)
)

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, as well as the Defendant, David R. Payne, by and through his counsel, and files this Factual Basis in support of the Plea Agreement filed simultaneously in this matter.

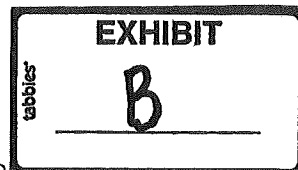
This Factual Basis is filed pursuant to Local Criminal Rule 11.2 and does not attempt to set forth all of the facts known to the United States at this time. By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to the Plea Agreement, and that the facts set forth in this Factual Basis are sufficient to establish all of the elements of the crime. The parties agree not to object to or otherwise contradict the facts set forth in this Factual Basis.

Upon acceptance of the plea, the United States will submit to the Probation Office a "Statement of Relevant Conduct" pursuant to Local Criminal Rule 32.4. The defendant may submit (but is not required to submit) a response to the Government's "Statement of Relevant Conduct" within seven days of its submission. The parties understand and agree that this Factual Basis does not necessarily represent all conduct relevant to sentencing. The parties agree that they have the right to object to facts set forth in the presentence report that are not contained in this Factual Basis. Either party may present to the Court additional relevant facts that do not contradict facts set forth in this Factual Basis.

1. On or about August 27, 2009, the defendant, David R. PAYNE, knowingly made false statements or omitted material information in a loan application to Bank of Asheville ("BOA"), an institution the accounts of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the actions of that institution, as alleged in Count Eight of the Bill of Indictment.

2. PAYNE made the false statements or material omissions in connection with his application for a \$522,000 consolidation loan on behalf of Provision 08, LLC, a corporate entity managed by PAYNE. More specifically, in a Loan Application and Information Sheet ("LAIS") executed by PAYNE on or about August 12, 2009, PAYNE made the following false statements or misleading omissions:

- a. On the LAIS, PAYNE indicated "no" when asked whether any business assets of Provision 08 had been pledged as collateral for loans or supplier agreements.



In truth and fact, PAYNE had pledged an asset of Provision 08 as collateral for a \$250,000 loan from Mountain First Bank & Trust on or about May 22, 2009. He had pledged another business asset of Provision 08 as collateral to Pisgah Community Bank to secure \$735,000 and \$100,000 loans taken out on or about January 20, 2009, and June 22, 2009. And he had pledged the same business asset of Provision 08 that he sought to use as collateral for the BOA loan to two prior lenders as security for loans of \$350,000 (to Mountain Mortgage, Inc.) and of \$100,000 (to a private hard-money lender). In summary, when PAYNE represented to BOA that he had not pledged any business assets of Provision 08 as collateral for loans, he knew or should have known that he had in fact pledged business assets of Provision 08 to secure at least \$1 million of indebtedness.


- b. On the LAIS, PAYNE indicated "yes" when asked whether the owners of Provision 08 (meaning PAYNE) had ownership of any other business or partnership, but he only disclosed his ownership interest in his law firm to the bank that made the loan. He did not disclose his ownership interests in any other business entities, such as Shire Properties, LLC, an entity that had taken out one of the undisclosed loans encumbering Provision 08 assets.
- c. On the LAIS, PAYNE disclosed only Provision 08's \$350,000 debt to Mountain Mortgage, Inc., in the "Business Debt Chart" field. He did not disclose the remainder of the Provision 08 debts set forth above.

3. PAYNE's false statements or material omissions were ones that the Defendant knew, or should have known, were made to influence BOA to issue a consolidation loan to PAYNE's entity Provision 08 in the amount of \$522,000.

4. PAYNE therefore admits to being guilty of the offense set forth in Count Eight of the Bill of Indictment.

5. The United States believes that the loss amount for which PAYNE can be held accountable in connection with this plea, consistent with the provisions of the United States Sentencing Guidelines, is \$261,000. As noted in the Plea Agreement, the Defendant disagrees with this loss calculation and intends to argue that the losses were substantially lower than that.

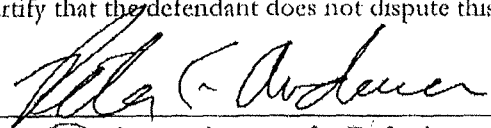
R. ANDREW MURRAY
UNITED STATES ATTORNEY



DANIEL V. BRADLEY
ASSISTANT UNITED STATES ATTORNEY

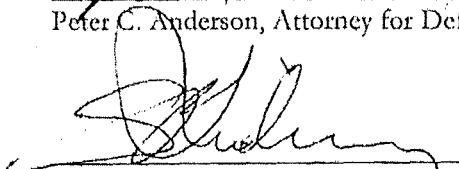
Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Bill of Indictment, and the Plea Agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Bill of Indictment, and the Plea Agreement. I hereby certify that the defendant does not dispute this Factual Basis.



Peter C. Anderson, Attorney for Defendant

DATED: 2/9/18

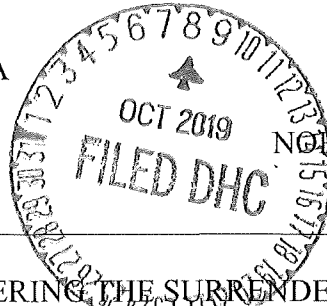


Stephen P. Lindsay, Attorney for Defendant

DATED: 2/9/18

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR
19 BCS 2

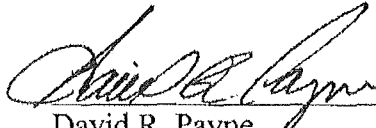
AFFIDAVIT TENDERING THE SURRENDER OF THE LICENSE OF
DAVID R. PAYNE

I, David R. Payne, being first duly sworn, say:

1. I desire to resign and hereby tender my license to practice law in North Carolina pursuant to the provisions of Section .0121 of the North Carolina State Bar Discipline and Disability Rules, 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0121.
2. My resignation is freely and voluntarily rendered. It is not the result of coercion or duress. I am fully aware of the implication of submitting my resignation.
3. I am aware that there is presently pending an investigation based upon my plea of guilty to and conviction of the federal felony offense of knowing false statement in violation of 18 U.S.C. § 1014, Count Eight of the Bill of Indictment filed against me in the United States District Court, Western District of North Carolina, Asheville Division, Docket No. 1:17-CR-73, for knowingly making false statements for the purpose of influencing an institution the accounts of which were insured by the Federal Deposit Insurance Corporation to the Bank of Asheville in connection with a loan obtained in August 2009. The Factual Basis relied upon by the Court when accepting my guilty plea is attached as Exhibit A.
4. I acknowledge that the material facts upon which the investigation is predicated are true.
5. My resignation is being submitted because I know that if charges were predicated upon the misconduct under investigation, I could not successfully defend against them.
6. I understand that the hearing by the Council of the North Carolina State Bar with regard to the acceptance of the tender of surrender of my license to practice law will occur at the regularly scheduled meeting of the Council of the North Carolina State Bar on Friday, October 25, 2019 at the State Bar building located at 217 East Edenton Street, Raleigh, North Carolina.
7. I hereby waive any further notice of the hearing before the Council on my affidavit of surrender. I waive any claim, argument, or assertion that I have not received proper or timely notice of the hearing before the Council on my affidavit of surrender or any other defect in notice. I further waive any and all right or privilege to appear before the Council at that hearing.

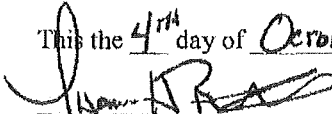
8. I affirm that I have had a full opportunity to seek the advice and counsel of an attorney in filing my Affidavit of Surrender and in waiving any rights set forth herein.

Respectfully submitted, this the 4th day of October, 2019.


David R. Payne

I, Thomas H. Burton, Notary Public of the County of HENDERSON, State of North Carolina, certify that David R. Payne, personally appeared before me this day, was sworn, attested that the foregoing Affidavit is true and accurate of his own personal knowledge, and executed the foregoing Affidavit.

This the 4th day of October, 2019


Notary Public
(print name) Thomas H Burton

My commission expires: 8/5/23



UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
 ASHEVILLE DIVISION

UNITED STATES OF AMERICA)	DOCKET NO.: 1:17-CR-73
)	
v.)	JOINT FACTUAL BASIS
)	
DAVID R. PAYNE)	
)	

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, as well as the Defendant, David R. Payne, by and through his counsel, and files this Factual Basis in support of the Plea Agreement filed simultaneously in this matter.

This Factual Basis is filed pursuant to Local Criminal Rule 11.2 and does not attempt to set forth all of the facts known to the United States at this time. By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to the Plea Agreement, and that the facts set forth in this Factual Basis are sufficient to establish all of the elements of the crime. The parties agree not to object to or otherwise contradict the facts set forth in this Factual Basis.

Upon acceptance of the plea, the United States will submit to the Probation Office a "Statement of Relevant Conduct" pursuant to Local Criminal Rule 32.4. The defendant may submit (but is not required to submit) a response to the Government's "Statement of Relevant Conduct" within seven days of its submission. The parties understand and agree that this Factual Basis does not necessarily represent all conduct relevant to sentencing. The parties agree that they have the right to object to facts set forth in the presentence report that are not contained in this Factual Basis. Either party may present to the Court additional relevant facts that do not contradict facts set forth in this Factual Basis.

1. On or about August 27, 2009, the defendant, David R. PAYNE, knowingly made false statements or omitted material information in a loan application to Bank of Asheville ("BOA"), an institution the accounts of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the actions of that institution, as alleged in Count Eight of the Bill of Indictment.

2. PAYNE made the false statements or material omissions in connection with his application for a \$522,000 consolidation loan on behalf of Provision 08, LLC, a corporate entity managed by PAYNE. More specifically, in a Loan Application and Information Sheet ("LAIS") executed by PAYNE on or about August 12, 2009, PAYNE made the following false statements or misleading omissions:

- a. On the LAIS, PAYNE indicated "no" when asked whether any business assets of Provision 08 had been pledged as collateral for loans or supplier agreements.

In truth and fact, PAYNE had pledged an asset of Provision 08 as collateral for a \$250,000 loan from Mountain First Bank & Trust on or about May 22, 2009. He had pledged another business asset of Provision 08 as collateral to Pisgah Community Bank to secure \$735,000 and \$100,000 loans taken out on or about January 20, 2009, and June 22, 2009. And he had pledged the same business asset of Provision 08 that he sought to use as collateral for the BOA loan to two prior lenders as security for loans of \$350,000 (to Mountain Mortgage, Inc.) and of \$100,000 (to a private hard-money lender). In summary, when PAYNE represented to BOA that he had not pledged any business assets of Provision 08 as collateral for loans, he knew or should have known that he had in fact pledged business assets of Provision 08 to secure at least \$1 million of indebtedness.


- b. On the LAIS, PAYNE indicated "yes" when asked whether the owners of Provision 08 (meaning PAYNE) had ownership of any other business or partnership, but he only disclosed his ownership interest in his law firm to the bank that made the loan. He did not disclose his ownership interests in any other business entities, such as Shire Properties, LLC, an entity that had taken out one of the undisclosed loans encumbering Provision 08 assets.
- c. On the LAIS, PAYNE disclosed only Provision 08's \$350,000 debt to Mountain Mortgage, Inc., in the "Business Debt Chart" field. He did not disclose the remainder of the Provision 08 debts set forth above.

3. PAYNE's false statements or material omissions were ones that the Defendant knew, or should have known, were made to influence BOA to issue a consolidation loan to PAYNE's entity Provision 08 in the amount of \$522,000.

4. PAYNE therefore admits to being guilty of the offense set forth in Count Eight of the Bill of Indictment.

5. The United States believes that the loss amount for which PAYNE can be held accountable in connection with this plea, consistent with the provisions of the United States Sentencing Guidelines, is \$261,000. As noted in the Plea Agreement, the Defendant disagrees with this loss calculation and intends to argue that the losses were substantially lower than that.


R. ANDREW MURRAY
UNITED STATES ATTORNEY



DANIEL V. BRADLEY
ASSISTANT UNITED STATES ATTORNEY

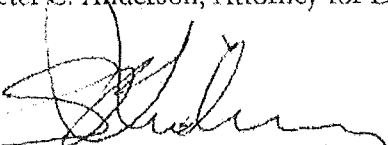
Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Bill of Indictment, and the Plea Agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Bill of Indictment, and the Plea Agreement. I hereby certify that the defendant does not dispute this Factual Basis.



Peter C. Anderson, Attorney for Defendant

DATED: 2/9/18



Stephen P. Lindsay, Attorney for Defendant

DATED: 2/9/18