

**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Argued March 10, 2020

Decided June 19, 2020

No. 18-3081

UNITED STATES OF AMERICA,
APPELLEE

v.

MICHAEL SANG HAN,
APPELLANT

Appeal from the United States District Court
for the District of Columbia,
(No. 1:15-cr-00142-1)

John August Boeglin, appointed by the court, argued the cause for appellant. With him on the briefs were *Kevin King*, *Michael J. Gaffney*, and *Tarek J. Austin*, all appointed by the court.

Elissa Hart-Mahan, Attorney, U.S. Department of Justice, argued the cause for appellee. With her on the brief were *Alexander P. Robbins*, Attorney, and *Jessie K. Liu*, U.S. Attorney at the time the brief was filed. *Elizabeth Trosman*, Assistant U.S. Attorney, entered an appearance.

Before: HENDERSON, GARLAND and MILLETT, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* GARLAND.

GARLAND, *Circuit Judge*: After a seven-day jury trial, defendant Michael Han was convicted of tax evasion in connection with his 2010 and 2011 individual tax returns. As chief executive of a recycling technology company, Han solicited millions of dollars from investors Frank Carlucci and James Russell. In the tax years charged, Han spent much of that company money on personal expenses. He also used it to pay down debt he owed the company for spending yet more company money on himself between 2004 and 2009. Han failed to report as income the corporate funds he converted to his personal benefit.

On appeal, Han challenges several rulings by the district court and the conduct of both the prosecution and his own counsel. We reject each challenge and affirm the judgment of the district court.

I

Han was the founder and chief executive of Envion, Inc., a recycling technology company that never sold any recycling technology and never earned any revenue. From 2004 to 2009, Han spent millions in investor funds on personal expenses, including Porsche sports cars. *See* Appendix (A.) 487-503. Neither Han nor Envion filed tax returns for any of those years until 2010, when prompted by an IRS notice about the delinquency. As Han turned to preparing his and the company's returns, he learned from his accountants

that his personal expenditures made with corporate funds could potentially be treated either as “taxable compensation” or as “a loan [from Envion] to the shareholder[, Han].” Supplemental Appendix (S.A.) 130 (accountant testimony). If treated as a loan, the money would not be taxed, but Han would have to repay it in the future. *Id.* He opted to treat the personal expenditures as shareholder loans.

At roughly the same time, Han solicited a further \$22 million from two of his existing investors, Frank Carlucci and James Russell. Although Carlucci and Russell thought they were providing the funds to Envion, *see* S.A. 73, 114-15, Han instead had them wired to his personal accounts, *see* S.A. 159, 165. He then used those funds to pay down his shareholder loan balance and make further personal expenditures, including the purchase of a Ferrari and renovations on his Palm Beach home. *See* S.A. 175, 198. In light of Han’s failure to report his conversion of corporate funds as income, the IRS ultimately concluded that Han had avoided paying \$1,133,784 in taxes in 2010 and \$3,822,243 in 2011.

Han was tried for tax evasion in connection with his 2010 and 2011 personal tax returns. Although Han did not himself testify, the heart of his defense was the claim that he had a good-faith belief that the funds from Carlucci and Russell were personal loans, which would not have been taxable. The jury convicted Han on two counts of tax evasion, and the district court sentenced him to 48 months’ imprisonment.

On appeal, Han mounts four challenges to his convictions. He argues that: (1) the district court admitted evidence that was irrelevant and improperly showed prior “bad acts”; (2) the government improperly appealed to “class prejudice” throughout the trial; (3) the district court erred in declining to give Han’s preferred theory-of-the-defense instruction; and (4) his trial counsel was ineffective. We address those challenges below.

II

Han’s principal contention is that the court wrongly permitted the government to introduce evidence that was not relevant to the 2010 and 2011 tax evasion charges, in violation of Federal Rule of Evidence 402. *See* FED. R. EVID. 402 (“Irrelevant evidence is not admissible.”). Han further maintains that the evidence was instead introduced to show prior bad conduct, in order to prove his bad character and a propensity to act in accordance with that character, in violation of Rule 404(b). *See* FED. R. EVID. 404(b)(1) (“Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.”). “We review a district court’s evidentiary rulings for abuse of discretion,” *United States v. Alexander*, 331 F.3d 116, 121 (D.C. Cir. 2003), and we find none.

1. We start with the evidence of Han’s expenditures from 2004 to 2009 and with his personal tax

returns for those years. Han maintains that there was no reason to introduce evidence of any of that past conduct. To show tax evasion in 2010 and 2011, he says, it would have sufficed to show that he converted corporate funds to personal use in 2010 and 2011. To the extent that Han used corporate funds to pay down his debt to Envion for *earlier* personal spending, he argues, the government did not need to demonstrate how that debt arose. As he says, it would have been unlawful for him to fail to report the repayments regardless of whether he had previously used Envion's money on charitable donations or on flashy cars.

This argument is true enough – as far as the government's obligation to show the existence of a tax deficiency goes. But it ignores the issue of Han's intent. In a tax-evasion case, the government's burden on that issue is steep. The prosecution was required to demonstrate beyond a reasonable doubt that Han acted *willfully* – “that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.” *Cheek v. United States*, 498 U.S. 192, 201 (1991); see *United States v. Khanu*, 662 F.3d 1226, 1229 (D.C. Cir. 2011).

The evidence in controversy was central to that issue. Although Han makes much of the fact that the other returns introduced were for “earlier” tax years, he did not file them until 2010 and 2011 – roughly contemporaneously with the conduct charged. *Compare, e.g.*, A. 436 (Han's 2006 tax return, filed June 2, 2011), *with* A. 368 (Han's 2010 return, filed November 14, 2011). And it was in the process of characterizing his

2004-2009 expenditures for those other returns, the government argued, that Han learned he could not defensibly characterize splurges on flashy cars (and other items) as business expenditures: It gave him “sort of a tutorial, [an] education session.” S.A. 230 (government’s closing argument). Han learned that he would have to find a different characterization if he wanted to avoid paying taxes on that and similar spending going forward. In other words, he developed “knowledge of [his] tax obligations” and began willfully planning to defy them. S.A. 231 (government’s closing argument).

Accordingly, the 2004-09 evidence was both relevant to the 2010-11 charges under Rule 402 and admissible under Rule 404(b). *See* FED. R. EVID. 404(b)(2) (providing that evidence of prior crimes, wrongs, or other acts “may be admissible for another purpose, such as proving . . . intent, . . . plan, [and] knowledge”). As we have explained, “[i]ntent and knowledge are . . . well-established non-propensity purposes for admitting evidence of prior crimes or acts.” *United States v. Bowie*, 232 F.3d 923, 930 (D.C. Cir. 2000).¹

Han further insists that, even if the 2004-09 evidence were relevant and admissible, its probative value was “substantially outweighed by the danger of . . . unfair prejudice.” FED. R. EVID. 403. Again, we may

¹ The district court did not address the government’s argument that the evidence was not covered by Rule 404(b) at all because it was “intrinsic” to the charged offenses. *See Bowie*, 232 F.3d at 929. Because we conclude that the evidence was admissible under Rule 404(b) in any event, we also have no need to address whether it was intrinsic.

overturn a district court's conclusion on that ground only if we find an abuse of discretion. *United States v. Gartmon*, 146 F.3d 1015, 1020 (D.C. Cir. 1998). We find nothing even close. To the contrary, the district court “took the appropriate steps to minimize the danger that the jury would use the 404(b) evidence for an improper purpose,” *United States v. Pettiford*, 517 F.3d 584, 590 (D.C. Cir. 2008), warning the government not to “linger on the more salacious details,” A. 88, and issuing an appropriate precautionary instruction, A. 328.

2. Han also charges that the court erred in admitting evidence that he made misrepresentations to investors about Envion's economic prospects. As we noted above, Han's principal defense was the claim that Carlucci and Russell had loaned \$22 million to him personally, rather than to Envion. Han agrees, of course, that the government was entitled to dispute that characterization with evidence of how Carlucci and Russell thought the funds would be used. But, he says, “[w]hile the representations that Carlucci and Russell relied on in wiring money to Mr. Han were relevant, evidence that these statements were *misrepresentations* was not.” Han Br. 28.

We disagree. Whether a borrower has the intent and ability to repay a purported loan is a factor in judging whether the transaction is in fact a loan for tax purposes. *See United States v. Swallow*, 511 F.2d 514, 519 (10th Cir. 1975) (holding that “loans obtained in bad faith and without an intent to repay them” are taxable income); *see also, e.g., United States v. McGinn*,

787 F.3d 116, 126-27 (2d Cir. 2015); *Welch v. Comm’r*, 204 F.3d 1228, 1230 (9th Cir. 2000). Here, the government introduced the challenged evidence to show that Han knew the deals he told the investors would be the source of their repayment would never be consummated – and hence that the investors’ money could not have constituted loans to Han because he had no intent or ability to repay them. A. 204-05; *see also* A. 205 (government proffer that Han “did not have any independent money”).

Finally, we note that the district court once again took exemplary care to insist that testimony on this subject be “brief[.]” and “very tailored,” and “to limit [how the government] could argue” the evidence in its closing. A. 208-09. We therefore conclude that the probative value of this evidence was not outweighed – substantially or otherwise – by the danger of unfair prejudice. *See* FED. R. EVID. 403.

III

As a companion to his argument that the government’s evidence was unduly prejudicial, Han alleges that the prosecution engaged in “a persistent appeal to class prejudice” from start to finish. Han. Br. 37 (quoting *United States v. Stahl*, 616 F.2d 30, 33 (2d Cir. 1980)). He emphasizes in particular that the government walked its witnesses through expenditures that it had *excluded* from its calculation of Han’s tax liability. Han Br. 35, 36.

But the government stayed within permissible bounds. To establish the existence and extent of the tax deficiency, the prosecution sought to show that the items on which Han spent corporate funds could not possibly be characterized as business expenses. As the district court rightly observed, that necessarily entailed showing the nature of those expenses and arguing, for example, that expensive sports cars could not have been company vehicles. *See* A. 176-77. As for the expenses excluded from the final calculation, the government brought them up to demonstrate where it drew the line – and how conservatively it did so. As the prosecutor put it in closing, the point was to show that the government’s case was “focus[ed] on the things that are pretty clear and obvious,” and that the government had not overcharged Han. A. 358.

IV

Next, Han argues that the district court erred in its handling of his theory-of-the-defense instruction. Included in the defense’s proposed instruction was a sentence stating that “Mr. Han believed that the funds he received in 2010 could legally be treated as non-taxable personal loans.” A. 276. The district court struck that sentence on the theory that, “since [Han] didn’t testify, we don’t know what he believed.” A. 295-96. The government agrees with Han that this was not a valid basis for refusing to include that statement. U.S. Br. 51 (citing *United States v. Hurt*, 527 F.3d 1347, 1351 (D.C. Cir. 2008)). And although the remainder of the instruction made clear that Han was mounting a defense

based on his claimed good-faith belief, it did not include the point that loans are not taxable.

Nonetheless, any error on this front was harmless. “[I]n light of all the circumstances – the language of the instructions, the arguments of counsel, and the evidence itself” – there was no real risk of confusion about Han’s theory of the case or its legal basis. *United States v. Lemire*, 720 F.2d 1327, 1339 (D.C. Cir. 1983). The government’s expert witness repeatedly testified that personal loans are not taxable. *See* S.A. 187-89, 215-16. The defense’s expert witness testified that personal loans are not taxable. *See* A. 263. And as Han’s counsel stressed during closing arguments, there was no disagreement on the point. *See* S.A. 270. Moreover, as Han further acknowledged on appeal, “the incredibility of [a defendant’s] claim that he considered the transactions to be loans’ can provide a basis to find the failure to instruct harmless.” Han Br. 47 (quoting *United States v. Black*, 843 F.2d 1456, 1462 (D.C. Cir. 1988)). On the record of this trial, Han’s claim that the \$22 million from Carlucci and Russell were personal loans to him, rather than investments in the company, falls well within the “incredible” category.²

² *See, e.g.*, S.A. 73 (Russell’s testimony that he did not, and would not, have given Han a personal loan); S.A. 114-15 (Marcia Carlucci’s testimony that her husband, who was too ill to testify, would not have given Han a \$20 million loan); A. 481-85 (global promissory note drafted by Han for Carlucci characterizing Envion as the debtor for the relevant amount); A. 464-69 (global promissory note for Russell characterizing Envion as the debtor for the relevant amount); A. 254-55 (Han’s stipulation in a civil suit that Carlucci provided the \$20 million “to *Envion*” and that

V

Finally, Han argues that he received ineffective assistance of counsel. The essence of this claim is that his attorney, over the warnings of the district court, opened the door to the otherwise inadmissible fact that Han has been held liable in a civil suit brought by Carlucci. *See* A. 189-196; *cf. United States v. Grey*, 891 F.3d 1054, 1058-60 (D.C. Cir. 2018) (observing that juries are “apt to give exaggerated weight to a judgment,” especially where “the civil judgment and the criminal charges involved virtually identical conduct” (internal quotation marks omitted)). When ineffectiveness “is raised for the first time on appeal, as it is here, our general practice is to remand to the district court for an evidentiary hearing unless it is clear from the record that counsel was or was not ineffective, or that the supposed defect in representation amounted to a strategic choice.” *United States v. Weaver*, 281 F.3d 228, 233-34 (D.C. Cir. 2002).

In this case, we find the issue clear enough to decide for ourselves. A defendant claiming ineffective assistance must both demonstrate that “counsel’s representation fell below an objective standard of reasonableness,” *Strickland v. Washington*, 466 U.S. 668, 688 (1984), and show “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” *id.* at 694. Counsel’s choice here may or may not have been

“*Han* [was] not a party to the promissory note” (emphases added)).

strategic,³ but we need not resolve that question. “[G]iven the extensive evidence of [his] guilt,” *Grey*, 891 F.3d at 1062, Han has no colorable argument that he was prejudiced by his attorney’s decision. Although we will refrain from reciting the entirety of the government’s case to that end, *see, e.g., supra* note 2, we will stress one of the most damning parts: Han’s own stipulation, in his answer to Carlucci’s civil suit, that “Mr. Carlucci provided \$20 million to *Envion*,” and that “*Han* [was] not a party to the promissory note.” A. 516-17 (emphases added). (Han did not object to the admission of this stipulation, only to the fact of the judgment of liability.) So much for Han’s claim that the money Carlucci provided was just a personal loan to Han.

VI

For the foregoing reasons, the judgment of the district court is

Affirmed.

³ The civil judgment came up in connection with defense counsel’s cross-examination of Kyle Harkrader, Han’s ex-wife, who testified against him and who had previously settled with Carlucci. *See* A. 189-96. As counsel explained at the time, his goal was to suggest that Harkrader might have had reason to deflect responsibility onto Han. A. 190-91.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-3081

September Term, 2019

FILED ON: JUNE 19, 2020

UNITED STATES OF AMERICA,
APPELLEE

v.

MICHAEL SANG HAN,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cr-00142-1)

Before: HENDERSON, GARLAND and MILLETT, *Circuit*
Judges

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the judgment of the District Court appealed from in this cause be affirmed, in accordance with the opinion of the court filed herein this date.

Per Curiam

14a

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Date: June 19, 2020

Opinion for the court filed by Circuit Judge Garland.

UNITED STATES DISTRICT COURT
District of Columbia

UNITED STATES
OF AMERICA

**JUDGMENT IN A
CRIMINAL CASE**

V.

(Filed Oct. 18, 2018)

MICHAEL SANG HAN

Case Number:
15-cr-00142-JEB

USM Number: 09957-104

Danielle Courtney Jahn
and David Nasse

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) 10s and 11s
after a plea of not guilty. _____

The defendants adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
26 USC § 7201	Tax Evasion	11/21/2011	10s
26 USC § 7201	Tax Evasion	10/10/2012	11s

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) 1-9 and 12

is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/17/2018

Date of Imposition of Judgment

James E. Boasberg

Signature of Judge

James E. Boasberg,

U.S. District Judge

Name and Title of Judge

10/18/18

Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Forty Eight (48) months on Counts 10s and 11s to run concurrent.

- The court makes the following recommendations to the Bureau of Prisons:

- Federal Correctional Institute (FCI) Morgantown, West Virginia

- Federal Correctional Complex (FCC) Petersburg, Virginia

- The defendant is remanded to the custody of the United States Marshal.

- The defendant shall surrender to the United States Marshal for this district:

- at _____ a.m. p.m. on _____

- as notified by the United States Marshal

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before 2 p.m. on _____

- as notified by the United States Marshal.

- as notified by the Probation or Pretrial Services Office.

18a

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

ADDITIONAL IMPRISONMENT TERMS

Defendant may self surrender after December 15, 2018
(12/15/18).

SUPERVISED RELEASE

Upon release from imprisonment, you will be on super-
vised release for a term of:

Thirty Six (36) months on Counts 10s and 11s to run
concurrent.

MANDATORY CONDITIONS

1. You must not commit another federal, state or lo-
cal crime.
2. You must not unlawfully possess a controlled sub-
stance.
3. You must refrain from any unlawful use of a con-
trolled substance. You must submit to one drug
test within 15 days of release from imprisonment

and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
- 5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change.

If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

Within 72 hours of release from custody, you shall report in person to the probation office in the district to which you are released. While on supervision, you shall submit to collection of DNA, you shall not possess a firearm or other dangerous weapon, you shall not use or possess an illegal controlled substance, and you shall not commit another federal, state, or local crime. You shall also abide by the general conditions of supervision adopted by the U.S. Probation Office, as well as the following special conditions:

Restitution Obligation – Having assessed your ability to pay, payment of the total criminal monetary penalties is due as follows: Payment in equal (monthly) installments of \$100 over a period of (e.g., months or years), to commence upon release.

Financial Payment – Because the judgment imposes a financial penalty, you must pay the financial penalty in accordance with the Schedule of Payments sheet of the judgment. You must also notify the court of any changes in economic circumstances that might affect the ability to pay this financial penalty.

Financial Restrictions – You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.

Financial Information Disclosure – You must provide the probation officer access to any requested financial information and authorize the release of any financial

information. The probation office may share financial information with the United States Attorney's Office.

Internal Revenue Service – You shall cooperate and arrange with the Internal Revenue Service to pay all past and present taxes, interest, and penalties owed. You shall file timely, accurate, and lawful income tax returns and show proof of same to the Probation Office.

CRIMINAL MONETARY PENALTIES.

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$	\$4,954,027.00

Assessment*

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

IRS RACS		\$4,954,027.00	
----------	--	----------------	--

Attn: Mail Stop 6261, Restitution.

333 W. Pershing Avenue
Kansas City, MO 64108.

TOTALS	\$ <u>0.00</u>	\$ <u>4,954,027.00</u>	
---------------	----------------	------------------------	--

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the

fine restitution.

the interest requirement for the fine
 restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

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

- A** Lump sum payment of \$ 200.00 due immediately, balance due
- not later than _____, or
- in accordance C, D, E, or F below;
or
- B** Payment to begin immediately (may be combined with C, D or, F below); or
- C** Payment in equal _____ (e.g., *weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (e.g., *months or years*), to commence _____ (e.g., *30 or 60 days*) after the date of this judgment; or
- D** Payment in equal _____ (e.g., *weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (e.g., *months or years*), to commence _____ (e.g., *30 or 60 days*) after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within _____ (e.g., *30 or 60 days*)

after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

- F** Special instructions regarding the payment of criminal monetary penalties:

The restitution and special assessments are immediately payable to the Clerk of the Court for the U.S. District Court, District of Columbia. Within 30 days of any change of address, you shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full. The Court waives any interest or penalties that may accrue on unpaid balance.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):

- The defendant shall forfeit the defendant's interest in the following property to the United States:

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) JvTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After
November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

- ineligible for all federal benefits for a period of _____
- ineligible for the following federal benefits for a period of _____
(specify benefit(s))

OR

- Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the

defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

- be ineligible for all federal benefits for a period of _____ .
- be ineligible for the following federal benefits for a period of _____ .

(specify benefit(s))

- successfully complete a drug testing and treatment program.
- perform community service, as specified in the probation and supervised release portion of this judgment.
- Having determined that this is the defendant's second or subsequent conviction for possession of a controlled substance, IT IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or

30a

services are required for eligibility. The clerk of court is responsible for sending a copy of this page and the first page of this judgment to:

**U.S. Department of Justice, Office of Justice
Programs, Washington, DC 20531**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- X

UNITED STATES OF AMERICA

v.

MICHAEL SANG HAN,

Defendant

Criminal Case
No. 15-142

----- X

Washington, D.C.
Tuesday, May 8, 2018
9:33 a.m.

TRANSCRIPT OF JURY TRIAL – DAY 6
BEFORE THE HONORABLE JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Derrick L. Williams, AUSA
Denise A. Simmonds, AUSA
U.S. ATTORNEY'S OFFICE
FOR D.C.

555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 252-7898

Sarah Caitlyn White Ranney, Esq.
U.S. DEPT. OF JUSTICE
Tax Division
601 D Street N.W., Room 7814
Washington, D.C. 20579
(202) 514-5616

Court Reporter: Lisa Walker Griffith, RPR
U.S. District Courthouse,
Room 6507
Washington, D.C. 20001
(202) 354-3247

[A239] LAURA MANION, GOVERNMENT WITNESS,
SWORN

THE DEPUTY CLERK: Please be seated.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MS. RANNEY:

Q. Good morning.

A. Good morning.

Q. Would you please state your name and spell it for the record?

A. Yes. It's Laura Manion, L-A-U-R-A, M-A-N-I-O-N.

Q. Ms. Manion, what do you do for work?

A. I am revenue agent with the Internal Revenue Service.

Q. Can you give us a brief overview of your educational background?

A. Yes. I have a bachelor's of science degree in accounting from Salisbury University.

Q. And can you give us a brief overview of your employment history?

A. Yes. I worked for a public accounting firm for about a year and a half out of college, and then I have worked with the IRS since October of 1994.

Q. And can you give us a brief overview of any different positions that you've held at the IRS?

A. Well, I've always been a revenue agent, just in

[A240] Q. What does it mean when you work on the first type of cases you mentioned, things where you're not working on a criminal case?

A. Those are just civil type audits. So again, it's just going out and doing an audit, interviewing taxpayer, reviewing records and coming to a conclusion at the end to determine the correct tax liability.

Q. And what does it mean when you work on criminal cases?

A. When I'm on a criminal case as a cooperating agent I'm there to assist the criminal investigation side on their investigation. So I do anything from as little as maybe just calculating the tax liability to working all aspects of the case.

Q. Agent Manion, if you could help us out with a few things as we get started. Is all money a person might get in a year taxable?

A. No, not all money is taxable.

Q. What is taxable?

A. Basically the law states that gross income is all income unless it's a specifically excluded from being taxable.

Q. And what is specifically excluded?

A. Things like gifts, maybe a student loan, a loan from a bank, things like that are not taxable.

[A241] Q. Is the list of exclusions fairly long or is it limited?

A. It's a pretty small list of nontaxable sources.

Q. Does a person need to report taxable income to the IRS?

A. Yes, they do.

Q. How do they do that?

A. They would do that on a form 1040 individual income tax return.

Q. Why did they do that?

A. It is the law that you need to report your income to the IRS.

Q. And you mentioned just a moment ago student loans or loans from a bank aren't included in taxable income. Are loans generally taxable?

A. No, if they are a legitimate loan, they are not taxable.

Q. So, Agent Manion, what stops a taxpayer in the United States from just claiming that all money

they get in a year is a loan and therefore they don't have to pay tax on it?

A. If it's something like, let's say you have a job and you get a W-2 at the end of the year, you obviously can't claim that's a loan because it's going to be reported to the IRS, and they're going to compare your tax return to what you [A242] reported. And so you will get – they will find out that way, that it's not a loan. But other than that, if you chose not to report it on your tax return, there would be no way for the IRS to know unless an audit were performed or some type of investigation.

Q. And if there were an audit performed, how would the IRS look to determine whether something was a loan or whether it was actually income to the person?

A. So, I, as an auditor, or as someone investigating would have to go in and look at the factors for a loan to determine if it is a true loan. Obviously, speaking to the taxpayer themselves, maybe other people. But just to determine if it truly is a loan.

Q. And you mentioned that there are some factors that you might look for. Can you tell us a bit about what you might look for, factors to determine whether something was a loan versus income?

A. Yes, I would look to see if there was a loan document. I would look to see if there were repayment terms or repayments made on that loan. I would look to see if there was interest being imputed on the loan.

I would also look to see if there was any ability to repay that loan. And I would also look to see if there was any intent to repay the loan.

Q. Well, if you weren't able to interview the taxpayer [A243] and get an honest assessment about intent, what are some indicia of intent that you might look for?

A. I would look at kind of what the taxpayer did, like his actions to me would show me if he intended to repay that loan. Obviously, no repayments were ever made, or if he didn't have the ability to repay it, it would give me the indication that it's not a valid loan.

Q. Now, is any one factor that you just mentioned determinative in the analysis for whether something is income or a loan?

A. No, like I said, there's numerous factors. And they really have to be looked at as a whole to come up with a clear decision on whether it's a loan or not.

Q. Agent Manion, in the specific circumstances where you're talking about money coming from a business to a shareholder of that business, are there particular factors that you might look for in that type of circumstance?

A. Yes, in that circumstance I would definitely probably look to see the control that the person who received the loan had over the company. If they had sole control and ownership of the company, it would lend it more to possibly it not being a loan. I would probably look at the magnitude of the loan in

comparison with the income of the company. So those are a couple factors.

Q. You mentioned a couple of factors. Are there [A244] additional factors that you might look for in the specific circumstances?

A. Yes, I would also look to see if there was a loan document in that regard as well, were there repayments, was there interest being imputed.

Q. I'd like to show you what's been marked as Government Exhibit 832.

A. Okay.

Q. If you could look at your screen there.

A. Yes.

Q. Agent Manion, does this look like a list of factors that you put together relating to the specific circumstances of money coming from a small business to a shareholder to determine whether those were loans or income?

A. Yes.

Q. And are these factors that you would apply in the circumstances we just discussed?

A. Yes, I would go through all of these.

MS. RANNEY: Move to admit as Government Exhibit 832?

MS. HIRZ: No objection, Your Honor.

THE COURT: Admitted.

(Government's Exhibit No. 832 was received in evidence.)

MS. RANNEY: If we could publish this to the jury,

* * *

[A252] BY MS. HIRZ:

Q. This document says that Michael S. Han, the individual, hereby promises to pay to the order of Mr. Frank C. Carlucci the sum of \$20 million with interest thereon; is that right?

A. Correct.

Q. So on the face of this document, it's a personal loan from Mr. Carlucci to Mr. Han?

A. Yes, looking at the writing on that document, yes.

Q. And you testified that the – you looked at the prior documentation for Mr. Carlucci?

A. Yes.

Q. And, in fact, this is the only document that has Mr. Michael S. Han promising to pay Mr. Carlucci back, right?

A. Correct.

Q. It's unique in that way?

A. Yes, the rest had Envion listed.

MS. HIRZ: And if we could pull up Government Exhibit 327. And just blow up the same portion of that document.

BY MS. HIRZ:

Q. And this also says Michael Han hereby promises to pay this time to the order of Mr. Jim Russell, the sum of \$2,300,000; is that right?

A. Yes.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES
OF AMERICA,**

Plaintiff,

vs.

MICHAEL SANG HAN,

Defendant.

**Criminal Action
No. 1:15-cr-142**

**Washington, DC
May 8, 2018**

2:17 p.m.

TRANSCRIPT OF JURY TRIAL

- DAY 6 - P.M. SESSION

BEFORE THE HONORABLE

JAMES E. BOASBERG

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

**For the Government: DERRICK L. WILLIAMS
DENISE A. SIMMONDS**

U.S. Attorney's Office for D.C.
555 Fourth Street, NW
Washington, DC 20530
(202) 252-7898

SARAH CAITLYN

WHITE RANNEY

U.S. Dept. of Justice
Tax Division
601 D Street NW, Room 7814
Washington, DC 20579
(202) 514-5616

**For the Defendant: GABRIELLE G. HIRZ
DAVID A. NASSE
JONATHAN A. FOSTER**
Ropes & Gray LLP
2099 Pennsylvania Avenue NW
Washington, DC 20006
(202) 626-3929

[A261] couldn't all look at one.

THE COURT: Okay, no problem.

(Jury present)

THE COURT: Welcome back, everybody.
We're now ready to proceed with the defense case.

Ms. Jahn, does the defense wish to call any witnesses?

MS. JAHN: We do, your Honor. Ms. Hirz will be handling it.

THE COURT: All right. So defense may call its first witness.

MS. HIRZ: Thank you, your Honor. The defense calls Mr. Robert Hersh.

THE COURT: Step on forward please, sir.

DEPUTY CLERK: Please remain standing and raise your right hand. Do you solemnly swear or affirm under the penalty of perjury that the testimony you shall present to the jury and to the Court will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

DEPUTY CLERK: Please be seated.

DIRECT EXAMINATION OF ROBERT HERSH
BY MS. HIRZ:

Q. Good afternoon, Mr. Hersh. Could you please [A262] convertible loan notes that you reviewed.

Just as an initial matter, what forms can investments in a company take?

A. Investments can be direct investments in the company as equity investments or it could be a loan that you're making to the company. That can also be an investment in a company.

Q. So in connection with your work in this case, did you review the various convertible loan notes issued by Envion to Mr. Frank Carlucci and Mr. James Russell?

A. Yes, I did.

Q. So were – I guess were those loans or were those equity?

A. Were they loans or were they equity, it was – as a convertible note, it really starts out as a loan. But it could be repaid – instead of being repaid with cash, it can be repaid with equity. So that's the nature of the convertible type of promissory note.

Q. Are you aware of any evidence that the loans were actually converted?

A. No.

Q. And so long as the loans aren't actually converted, they're still debt, they're still loans, is that right?

A. Right, so they're classified as debt.

[A263] **Q.** And you also reviewed the \$2.3 million and \$20,000,000 loan notes from 2010, is that right?

A. Yes, I did.

Q. And what observations did you make about how those loans were different from the prior loans?

A. The \$20,000,000 loan from Mr. Carlucci and the \$2.3 million loan from Mr. Russell indicated the borrower as Michael Han individually, personally. Whereas the other loans prior to that loan, the other loans indicated Envion, Inc. as the borrower or Envion Industries as the borrower on these documents. They may have been joint sometimes with Mr. Han, but very – most often, it was either just Envion, Inc. or Envion Industries as the borrower.

Q. So if there is a note where a person is making a loan to an individual and that individual can repay the loan either with cash or with shares they have in the company, how is that treated initially for tax purposes?

A. When a loan is made to an individual personally, that individual that receives the loan, the borrower, doesn't have any income to report. There's no taxable income to report. When the loan is repaid, if it's repaid by cash, again, there's no impact on that individual's tax return.

If the loan is repaid by equity, you know, by shares of stock in the company, then the borrower that [A264] for in cash. So the question in my mind would be, you know, was that source of funding in order to pay for that house, is that taxable from taxable sources or from non-taxable sources. There were large charitable contributions, particularly in 2011, like a \$250,000 charitable contribution. Again, I would want to know, okay, where did the money come from to make that charitable contribution. Because the income shown to me on the tax organizer and other sources that he had really just showed a W2 of over a couple hundred thousand dollars.

BY MS. HIRZ:

Q. Was there any additional information on the tax returns for Envion, Inc. that would have also led you on a similar inquiry?

A. The fact that there were shareholder loans repaid during those years, again, where did the shareholder – where did Mr. Han come up with the money to repay these loans; did it come from a taxable source or a non-taxable source.

Q. Was there any other explanation in the tax returns or the records from Mr. Pennington that would have explained those items?

A. No, I did not see any.

Q. Based on your review of documents in this case, what do you think was the appropriate way to account for [A265] these \$2.3 million and \$20,000,000 wire transfers made to Mr. Han in 2010?

A. I wouldn't have reported those loans as taxable income in 2010 or 2011. The loan documents themselves showed Mr. Han as being the borrower personally. There was a fax, facsimile that went from Mr. Carlucci to his bankers at Morgan Stanley telling them to wire transfer the \$20,000,000 into Mr. Han's personal account. There was an outgoing Morgan Stanley wire authorization in which Mr. Carlucci signed that this money was to be wired into Mr. Han's personal account. There was a confirmation from Morgan Stanley saying yes, we wired this money into Mr. Han's personal account.

So those factors, in addition to the promissory note itself that shows Mr. Han being a borrower personally, would indicate that it was a personal note and proceeds received from personal loans are not taxable income.

MS. HIRZ: The Court's indulgence for just a moment.

THE COURT: You may.

MS. HIRZ: No further questions of this witness, your Honor.

THE COURT: Thank you. Cross?

MS. RANNEY: Yes, your Honor.

THE COURT: All right.

THIS NOTE AND THE SHARES OF CAPITAL STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE, AND ANY OF SUCH SHARES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF REGISTRATION UNDER SAID ACT AND ALL OTHER APPLICABLE SECURITIES LAWS, OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

CONVERTIBLE PROMISSORY NOTE

\$20,000,000

October 10, 2010

FOR VALUE RECEIVED, MICHAEL S. HAN (the "Individual"), a Individual, hereby promises to pay to the order of Mr. Frank C. Carlucci (the "Holder") the sum of Twenty Million Dollars Only (\$20,000,000) with interest thereon from the date of issuance of this Note at the rate set forth in Section 1.1 hereof. All payments to be made by the Individual in repayment of interest and principal hereunder shall be made in currency of the United States of America which at the time of payment shall be legal tender for the payment of public or private debts.

1. PAYMENTS OF PRINCIPAL AND INTEREST.

1.1 Rate of Interest. For the period from the date hereof until all sums due hereunder, whether principal, interest, charges, fees or other sums, have been paid in full, interest shall accrue on the unpaid principal balance of this Note at the simple rate of eight percent (8.00%) per annum. Interest on the outstanding principal balance of the Note will be computed on the basis of a 365-day year.

1.2 Principal and Interest Payment. Unless converted into shares of the Individual's capital stock in accordance with Section 3 hereof, the total amount of principal due under this Note and all accrued and unpaid interest thereon shall be paid in a single lump sum by the Individual.

2. PREPAYMENTS PRIOR TO MATURITY.

Notwithstanding any other provisions of this Note, the Individual may prepay the Note in whole or in part at any time without penalty. Any prepayments received with respect to this Note shall first be applied to the accrued but unpaid interest then outstanding, with the remainder, if any, applied to principal.

3. CONVERSION OF NOTE.

3.1 Optional Conversion. The principal amount and all accrued and unpaid interest owing under this Note may be converted on the Maturity Date or thereafter (if this Note is not paid on the Maturity Date), in whole, into fully paid and non-assessable shares of the Individual's common stock ("Common Stock") as

provided below. In the event that the Holder wishes to convert this Note into Common Stock, the Holder shall provide the Individual with notice (the “Conversion Notice”), at least fifteen (15) days prior to the Maturity Date, that the Holder wishes to convert the Note into shares of Common Stock. Following receipt of the Conversion Notice, the Individual shall have the option of either: (i) converting, on the Maturity Date, the principal amount and all accrued and unpaid interest owing into Common Stock per share (which is based on a Individual valuation of \$23,000,000,000 and at the Individual’s capitalization as of the date hereof); or (ii) electing to prepay the Note prior to the Maturity Date in accordance with Section 2.

3.2 Fractional Shares. No fractional shares of capital stock shall be issued upon conversion of this Note. Instead of any fractional share that would otherwise be issuable upon conversion of this Note, the Individual shall pay a cash adjustment in respect of such fractional interest in an amount equal to the fair market value of such fractional interest as determined by the Board of Directors (whose good faith determination shall be conclusive).

3.3 Individual to Provide Stock. The Individual shall at all times reserve and keep available out of the aggregate of its authorized but unissued capital stock or its issued capital stock held in its treasury, or both, for the purpose of effecting the conversion of this Note, such number of shares of capital stock or as shall then be issuable upon the conversion of this Note. The Individual covenants that all shares of capital stock issued

on conversion of this Note shall be duly and validly issued and fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof.

4. EVENTS OF DEFAULT.

4.1 Events of Default Defined. The principal and interest due and owing on this Note will become immediately due and payable, at the option and only upon the consent of the Majority Holders, without notice, demand, protest, notice of protest and notice of default (other than as provided herein) presentment for payment and diligence in collection, all of which are expressly waived, if the Individual shall (i) breach any of its obligations under this Note; (ii) admit in writing its inability to pay its debts generally as they become due, (iii) file a petition in bankruptcy or petition to take advantage of any insolvency act, (iv) make an assignment for the benefit of its creditors, (v) consent to the appointment of a receiver of itself or of the whole of any substantial part of its property, (vi) on a petition in bankruptcy filed against it, be adjudicated as a bankrupt, (vii) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, or (viii) distribute any of its assets upon any dissolution, winding up, liquidation or reorganization of the Individual. For purposes hereof, each of the above events is hereafter referred to as an “Event of Default”.

4.2 Notification. If an Event of Default as defined above shall occur, the Individual will notify the Holder promptly in writing by mail of the Event of Default describing it in reasonable detail, including a statement of the nature and length of existence thereof, and what action the Individual proposes to take with respect thereto.

5. SUITS FOR ENFORCEMENT UPON DEFAULT.

If an Event of Default shall have occurred, then and in any such event the Holder may, at any time at its option, declare the principal of and the accrued interest due under the Note to be due and payable, whereupon the same shall forthwith mature and become due and payable without demand, protest, notice of protest and notice of default, presentment for payment and diligence in collection, all of which are hereby expressly waived by the Individual. In case any Event of Default shall occur, the Holder may proceed to protect and enforce its rights hereunder by a suit in equity, action at law or other appropriate proceeding. No course of dealing and no delay on the part of the Holder in exercising any rights shall operate as a waiver thereof or otherwise prejudice their rights and no consent or waiver shall extend beyond the particular case involved.

6. NOTICES.

Any request, demand, authorization, direction, notice, consent, waiver or other document permitted by this Note to be made upon, given or furnished to, or

filed with the Individual or the Holder shall be sufficient for every purpose hereunder if in writing and mailed to the Individual, addressed to it at 1027 33rd Street, Washington, DC 20007 (or such subsequent address as the Individual shall advise the Holder hereof in writing) and if to the Holder at the address at which payments are being made (or at such further address as the Holder hereof shall advise the Individual in writing). All notices required hereunder shall be deemed to have been given or made when actually delivered to or received by the party to which the notice is addressed at its respective address.

7. MUTILATION, DESTRUCTION, LOSS, OR REISSUANCE.

7.1 Mutilation. This Note, if mutilated, may be surrendered and thereupon the Individual shall execute and deliver in exchange therefore a new Note of like tenor and principal amount.

7.2 Destruction, Loss, Etc. If there is delivered to the Individual (i) evidence of the destruction, loss, or theft of this Note and (ii) such indemnity as may be required by it to save it harmless, then, in the absence of notice to the Individual that this Note has been acquired by a bona fide purchaser, the Individual shall execute and deliver in lieu of such destroyed, lost or stolen Note, a new Note of like tenor and principal amount.

8. SUCCESSORS.

All of the covenants, stipulations, promises and agreements in this Note contained by or on behalf of the Individual shall bind and inure to the benefit of its successors whether so expressed or not and also to the benefit of the Holder and its successors.

9. GOVERNING LAW.

This Note shall be deemed to be a contract made under the laws of the Commonwealth of Virginia and for all purposes shall be construed in accordance with the laws of such state.

10. TRANSFERABILITY OF NOTE.

This Note and the shares of capital stock issuable upon conversion hereof are not transferable except pursuant to an effective registration statement under the Securities Act of 1933, as amended, or unless an exemption from the registration provisions of such Act is applicable.

[Remainder of Page Intentionally Left Blank]

54a

IN WITNESS WHEREOF, the Individual has caused this Note to be executed in its individual name by its duly authorized officers and to be dated as of the day and year first above written.

INDIVIDUAL

By: /s/ Michael Han
Michael Han

FCC's Copy

THIS NOTE AND THE SHARES OF CAPITAL STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE, AND ANY OF SUCH SHARES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF REGISTRATION UNDER SAID ACT AND ALL OTHER APPLICABLE SECURITIES LAWS, OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

CONVERTIBLE PROMISSORY NOTE

\$900,000

August 1, 2008

FOR VALUE RECEIVED, ENVION, INC. (the "Company"), a Delaware Corporation, hereby promises to pay to the order of Mr. Frank Carlucci (the "Holder") the sum of Nine Hundred Thousand Only (\$900,000) with interest thereon from the date of issuance of this

Note at the rate set forth in Section 1.1 hereof. All payments to be made by the Company in repayment of interest and principal hereunder shall be made in currency of the United States of America which at the time of payment shall be legal tender for the payment of public or private debts.

1. PAYMENTS OF PRINCIPAL AND INTEREST.

1.1 Rate of Interest. For the period from the date hereof until all sums due hereunder, whether principal, interest, charges, fees or other sums, have been paid in full, interest shall accrue on the unpaid principal balance of this Note at the simple rate of eight percent (8.00%) per annum. Interest on the outstanding principal balance of the Note will be computed on the basis of a 365-day year.

1.2 Principal and Interest Payment. Unless converted into shares of the Company's capital stock in accordance with Section 3 hereof, the total amount of principal due under this Note and all accrued and unpaid interest thereon shall be paid in a single lump sum by the Company on October 1, 2008 (the "Maturity Date").

2. PREPAYMENTS PRIOR TO MATURITY.

Notwithstanding any other provisions of this Note, the Company may prepay the Note in whole or in part at any time without penalty. Any prepayments received with respect to this Note shall first be applied to the accrued but unpaid interest then outstanding, with the remainder, if any, applied to principal.

3. CONVERSION OF NOTE.

3.1 Optional Conversion. The principal amount and all accrued and unpaid interest owing under this Note may be converted on the Maturity Date or thereafter (if this Note is not paid on the Maturity Date), in whole, into fully paid and non-assessable shares of the Company's common stock ("Common Stock") as provided below. In the event that the Holder wishes to convert this Note into Common Stock, the Holder shall provide the Company with notice (the "Conversion Notice"), at least fifteen (15) days prior to the Maturity Date, that the Holder wishes to convert the Note into shares of Common Stock. Following receipt of the Conversion Notice, the Company shall have the option of either: (i) converting, on the Maturity Date, the principal amount and all accrued and unpaid interest owing into Common Stock per share (which is based on a Company valuation of \$175,000,000 and at the Company's capitalization as of the date hereof); or (ii) electing to prepay the Note prior to the Maturity Date in accordance with Section 2.

3.2 Fractional Shares. No fractional shares of capital stock shall be issued upon conversion of this Note. Instead of any fractional share that would otherwise be issuable upon conversion of this Note, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to the fair market value of such fractional interest as determined by the Board of Directors (whose good faith determination shall be conclusive).

3.3 Company to Provide Stock. The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued capital stock or its issued capital stock held in its treasury, or both, for the purpose of effecting the conversion of this Note, such number of shares of capital stock or as shall then be issuable upon the conversion of this Note. The Company covenants that all shares of capital stock issued on conversion of this Note shall be duly and validly issued and fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof.

4. EVENTS OF DEFAULT.

4.1 Events of Default Defined. The principal and interest due and owing on this Note will become immediately due and payable, at the option and only upon the consent of the Majority Holders, without notice, demand, protest, notice of protest and notice of default (other than as provided herein) presentment for payment and diligence in collection, all of which are expressly waived, if the Company shall (i) breach any of its obligations under this Note; (ii) admit in writing its inability to pay its debts generally as they become due, (iii) file a petition in bankruptcy or petition to take advantage of any insolvency act, (iv) make an assignment for the benefit of its creditors, (v) consent to the appointment of a receiver of itself or of the whole of any substantial part of its property, (vi) on a petition in bankruptcy filed against it, be adjudicated as a bankrupt, (vii) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy

laws or any other applicable law or statute of the United States of America or any state thereof, or (viii) distribute any of its assets upon any dissolution, winding up, liquidation or reorganization of the Company. For purposes hereof, each of the above events is hereafter referred to as an "Event of Default".

4.2 Notification. If an Event of Default as defined above shall occur, the Company will notify the Holder promptly in writing by mail of the Event of Default describing it in reasonable detail, including a statement of the nature and length of existence thereof, and what action the Company proposes to take with respect thereto.

5. SUITS FOR ENFORCEMENT UPON DEFAULT.

If an Event of Default shall have occurred, then and in any such event the Holder may, at any time at its option, declare the principal of and the accrued interest due under the Note to be due and payable, whereupon the same shall forthwith mature and become due and payable without demand, protest, notice of protest and notice of default, presentment for payment and diligence in collection, all of which are hereby expressly waived by the Company. In case any Event of Default shall occur, the Holder may proceed to protect and enforce its rights hereunder by a suit in equity, action at law or other appropriate proceeding. No course of dealing and no delay on the part of the Holder in exercising any rights shall operate as a waiver thereof or otherwise prejudice their rights and

no consent or waiver shall extend beyond the particular case involved.

6. NOTICES.

Any request, demand, authorization, direction, notice, consent, waiver or other document permitted by this Note to be made upon, given or furnished to, or filed with the Company or the Holder shall be sufficient for every purpose hereunder if in writing and mailed to the Company, addressed to it at 1054 31st Street, Suite 300, Washington, D.C. 20007 (or such subsequent address as the Company shall advise the Holder hereof in writing) and if to the Holder at the address at which payments are being made (or at such further address as the Holder hereof shall advise the Company in writing). All notices required hereunder shall be deemed to have been given or made when actually delivered to or received by the party to which the notice is addressed at its respective address.

7. MUTILATION, DESTRUCTION, LOSS, OR REISSUANCE.

7.1 Mutilation. This Note, if mutilated, may be surrendered and thereupon the Company shall execute and deliver in exchange therefore a new Note of like tenor and principal amount.

7.2 Destruction, Loss, Etc. If there is delivered to the Company (i) evidence of the destruction, loss, or theft of this Note and (ii) such indemnity as may be required by it to save it harmless, then, in the absence of notice to the Company that this Note has been

acquired by a bona fide purchaser, the Company shall execute and deliver in lieu of such destroyed, lost or stolen Note, a new Note of like tenor and principal amount.

8. SUCCESSORS.

All of the covenants, stipulations, promises and agreements in this Note contained by or on behalf of the Company shall bind and inure to the benefit of its successors whether so expressed or not and also to the benefit of the Holder and its successors.

9. GOVERNING LAW.

This Note shall be deemed to be a contract made under the laws of the Commonwealth of Virginia and for all purposes shall be construed in accordance with the laws of such state.

10. TRANSFERABILITY OF NOTE.

This Note and the shares of capital stock issuable upon conversion hereof are not transferable except pursuant to an effective registration statement under the Securities Act of 1933, as amended, or unless an exemption from the registration provisions of such Act is applicable.

[Remainder of Page Intentionally Left Blank]

61a

IN WITNESS WHEREOF, the Company has caused this Note to be executed in its corporate name by its duly authorized officers and to be dated as of the day and year first above written.

ENVION, INC.

By:

/s/ Michael Han
Michael Han

THIS NOTE AND THE SHARES OF CAPITAL STOCK. ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE AND ANY OF SUCH SHARES MAY NOT BE SOLD, OFFERED FOR SALE, FLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF REGISTRATION UNDER SAID ACT AND ALL OTHER APPLICABLE SECURITIES LAWS, OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE:

April 16, 2012

CONVERTIBLE PROMISSORY NOTE

Whereas,

- James E. Russell (the Holder) has issued in favor of Envion, Inc. (the "Company") the following convertible promissory notes, for the following values and on the following dates (the "Former Notes"):

62a

- o Note from 7/20/2007 for \$200,000
 - o Note from 12/4/2007 for \$210,000
 - o Note from 2/27/2008 for \$1,000,000
 - o Note from 8/1/2008 for \$2,000,000
 - o Note from 12/19/2008 for \$400,000
 - o Note from 2/16/2009 for \$500,000
 - o Note from 4/14/2009 for \$250,000
 - o Note from 6/3/2009 for \$500,000
 - o Note paid by the Holder to Mr. Michael S. Han on or around July 2010 for \$2,300,000
- The Holder and Company have agreed to renew those notes and extend the maturity term thereto by duly executing this agreement (the “New Note”) that supersedes and replaces the Former Notes for any matter.

Now, therefore, after friendly consultations and proceeding on principles of fairness and equality, the parties hereto have agreed the following on this 16th day of April of 2012:

1. ISSUANCE OF THE NEW NOTE AND SUPERSEDING EFFECT

1.1 For value received the Company hereby promises to pay to the order of the Holder the sum of Seven Million Three Hundred Sixty Thousand Dollars Only(\$7,360,000) by December 31, 2012 (the “Maturity Date”) with interest thereon from the date of issuance

of this New Note at the rate set forth in Section 2.1 hereof. All payments to be made by the Company in repayment of interest and principal hereunder shall be made in currency of the United States of America which at the time of payment shall be legal tender for the payment of public or private debts.

1.2 The New Note shall supersede and replace all the promissory notes that the Holder has issued up to the date of execution of this agreement in favor of the Company and/or of Michael S. Han, leaving without any effect those promissory notes, except as otherwise stated herein.

2. PAYMENTS OF PRINCIPAL AND INTEREST.

2.1 Rate of Interest. For the period from the date hereof until all sums due hereunder, whether principal, interest, charges, *fees* or other *sums*, have been paid in full, interest shall accrue on the unpaid principal balance of this New Note at the simple-rate of eight percent (8.00%) per annum. Interest on the outstanding principal balance of the New Note will be computed on the basis of a 365-day year. The amounts already paid by the Company as interests for the Former Notes before the execution of the New Note shall be correspondingly deducted, (including the payment for \$110,000 made on or around December 23, 2012). Any interest corresponding to the Fortner Notes not paid at the present date shall be still due.

2.2 Principal and Interest Payment. Unless converted into shares of the Company's capital stock in accordance with Section 4 hereof, the total amount of

principal due under this New Note and all accrued and unpaid interest thereon shall be paid in it single lump sum by the Company. However, the Company may opt for paying interests by installments before the Maturity Date.

3. PREPAYMENTS PRIOR TO MATURITY.

Notwithstanding any other provisions of this New Note, the Company may prepay the New Note in whole or in part at any time without penalty. Any prepayments received with respect to this New Note shall first be applied to the accrued but unpaid interest then outstanding, with the remainder, if any, applied to principal.

4. CONVERSION OF NEW NOTE.

4.1 Optional Conversion. The principal amount and all accrued and unpaid interest owing under this New Note may be converted on the Maturity Date or thereafter (if this New Note is not paid on the Maturity Date), in whole, into fully paid and non-assessable shares of the Company's common stock ("Common Stock") as provided below. In the event that the Holder wishes to convert this New Note into Common Stock, the Holder shall provide the Company with notice (the "Conversion Notice"), at least fifteen (15) days prior to the Maturity Date, that the Holder wishes to convert the New Note into shares of Common Stock. Following receipt of the Conversion Notice, the Company shall have the option of either: (i) converting, on the Maturity Date, the principal amount and all accrued and unpaid interest owing into Common Stock per share

(which shall be based on a Company valuation of \$4,000,000,000 and at the Company's capitalization as of the date hereof); or (ii) electing to prepay the New Note prior to the Maturity Date in accordance with Section 3.

4.2 Fractional Shares. No fractional shares of capital stock shall be issued upon conversion of this New Note. Instead of any fractional share that would otherwise be issuable upon conversion of this New Note, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to the fair market value of such fractional interest as determined by the Board of Directors (whose good faith determination shall be conclusive).

4.3 Company to Provide: Stock. The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued capital stock or its issued capital stock held in its treasury, or both, for the purpose of effecting the conversion of this New Note, such number of shares of capital stock or as shall then be issuable upon the conversion of this New Note. The Company covenants that all shares of capital stock issued on conversion of this New Note shall be duly and validly issued and fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof.

5. EVENTS OF DEFAULT.

5.1 Events of Default Defined. The principal and interest due and owing on this New Note will become immediately due and payable, at the option and only

upon the consent of the Majority Holders, without notice, demand, protest, notice of protest and notice of default (other than as provided herein) presentment for payment and diligence in collection, all of which are expressly waived, if the Company shall (i) breach any of its obligations under this New Note; (ii) admit in writing its inability to pay its debts generally as they become due, (iii) file a petition in bankruptcy or petition to take advantage of any insolvency act, (iv) make an assignment for the benefit of its creditors, (v) consent to the appointment of a receiver of itself or of the whole of any substantial part of its property, (vi) on a petition in bankruptcy filed against it, be adjudicated as a bankrupt, (vii) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, or (viii) distribute any of its assets upon any dissolution, winding up, liquidation or reorganization of the Company. For purposes hereof, each of the above events is hereafter referred to as an "Event of Default".

5.2 Notification. If an Event of Default as defined above shall occur, the Company will notify the Holder promptly in writing by mail of the Event of Default describing it in reasonable detail, including a statement of the nature and length of existence thereof, and what action the Company proposes to take with respect thereto.

6. SUITS FOR ENFORCEMENT UPON DEFAULT.

If an Event of Default shall have occurred, then and in any such event the Holder may, at any time at its option, declare the principal of and the accrued interest due under the New Note to be due and payable, whereupon the same shall forthwith mature and become due and payable without demand, protest, notice of protest and notice of default, presentment for payment and diligence in collection, all of which are hereby expressly waived by the Company. In case any Event of Default shall occur, the Holder may proceed to protect and enforce its rights hereunder by a suit in equity, action at law or other appropriate proceeding. No course of dealing and no delay on the part of the Holder in exercising any rights shall operate as a waiver thereof or otherwise prejudice their rights and no consent or waiver shall extend beyond the particular case involved.

7. NOTICES.

Any request, demand, authorization, direction, notice, consent, waiver or other document permitted by this New Note to be made upon, given or furnished to or filed with the Company or the Holder shall be sufficient for every purpose hereunder if in writing and mailed to the Company, addressed to it at 510 Evernia Street, West Palm Beach, Florida 33401 (or such subsequent address as the Company shall advise the Holder hereof in writing) and if to the Holder at the address at which payments are being made (or at such

further address as the Holder hereof shall advise the Company in writing). All notices required hereunder shall be deemed to have been given or made when actually delivered to or received by the party to which the notice is addressed at its respective address.

8. MUTILATION, DESTRUCTION, LOSS, OR REISSUANCE.

8.1 Mutilation. This New Note, if mutilated, may be surrendered and thereupon the Company shall execute and deliver in exchange therefore a new Note of like tenor and principal amount.

8.2 Destruction, Loss, Etc. If there is delivered to the Company (i) evidence of the destruction, loss, or theft of this New Note and (ii) such indemnity as may be required by it to save it harmless, then; in the absence of notice to the Company that this New Note has been acquired by a bona fide purchaser, the Company shall execute and deliver in lieu of such destroyed, lost or stolen New Note, a new Note of like *tenor* and principal amount.

9. SUCCESSORS.

All of the covenants, stipulations, promises and agreements in this New Note contained by or on behalf of the Company shall bind and insure to the benefit of its successors whether so expressed or not and also to, the benefit of the Holder and its successors.

10. GOVERNING LAW.

This New Note shall be deemed to be a contract made under the laws of the Commonwealth of Virginia and for all purposes shall be construed in accordance with the laws of such state.

11. TRANSFERABILITY OF NEW NOTE.

This New Note and the shares of capital stock issuable upon conversion hereof are not transferable except pursuant to an effective registration statement under the Securities Act of 1933, as amended, or unless an exemption from the registration provisions of such Act is applicable.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this New Note to be duly executed by their proper and duly authorized representative as of the day and year first above written:

ENVION, INC. JAMES E. RUSSELL

By: /s/ Michael Han **Signature:** /s/ James E. Russell

Signature: /s/ Michael Han **Date:** April 16, 2012

Title: CEO

Date: April 16, 2012

Envion Investment Summary

Jim Russell

January 15, 2010

Date	Check Amount	Envion Note/ M Han Option	Co. Valuation
June 20, 2007	\$200,000	\$200,000	\$150,000
Sept 14, 2007	\$200,000	\$200,000	\$150,000
Dec 4, 2007	\$210,000	\$210,000	\$150,000
Feb 27, 2008	\$1,000,000	\$1,000,000	\$150,000
Aug 1, 2008	\$2,000,000	\$2,000,000	\$150,000
Dec 21, 2008	\$400,000	\$400,000	\$200,000
Dec 19, 2008	Note 1	\$500,000	\$200,000
Feb 15, 2009	\$500,000	\$1,000,000	\$200,000
Apr 13, 2009	\$250,000	\$500,000	\$200,000
May 31, 2009	\$500,000	\$1,000,000	
Totals	\$5,260,000	\$7,010,000	

Note 1-Michael Han Option grant agreement with James A Russell, son as part of \$400,000 investment and check of Dec 19, 2008. Since I have separately established a GRAT with an Envion promissory note with my son as beneficiary, I want distributions from this option grant agreement made to myself.

THIS NOTE AND THE SHARES OF CAPITAL STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE, AND ANY OF SUCH SHARES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF REGISTRATION UNDER SAID ACT AND ALL OTHER APPLICABLE SECURITIES LAWS, OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

CONVERTIBLE PROMISSORY NOTE

\$2,300,000

July 9, 2010

FOR VALUE RECEIVED, MICHAEL S. HAN (the "Individual"), hereby promises to pay to the order of Mr. Jim Russell (the "Holder") the sum of Two Million Three Hundred Thousand Dollars Only (\$2,300,000) with interest thereon from the date of issuance of this Note at the rate set forth in Section 1.1 hereof. All payments to be made by the Individual in repayment of interest and principal hereunder shall be made in

currency of the United States of America which at the time of payment shall be legal tender for the payment of public or private debts.

1. PAYMENTS OF PRINCIPAL AND INTEREST.

1.1 Rate of Interest. For the period from the date hereof until all sums due hereunder, whether principal, interest, charges, fees or other sums, have been paid in full, interest shall accrue on the unpaid principal balance of this Note at the simple rate of eight percent (8.00%) per annum. Interest on the outstanding principal balance of the Note will be computed on the basis of a 365-day year.

1.2 Principal and Interest Payment. Unless converted into shares of the Individual's capital stock in accordance with Section 3 hereof, the total amount of principal due under this Note will total up to \$10,000,000 including all accrued and unpaid interest thereon paid in a single lump sum by the Individual on September 10, 2010 (the "Maturity Date").

2. PREPAYMENTS PRIOR TO MATURITY.

Notwithstanding any other provisions of this Note, the Individual may prepay the Note in whole or in part at any time without penalty. Any prepayments received with respect to this Note shall first be applied to the accrued but unpaid interest then outstanding, with the remainder, if any, applied to principal.

3. CONVERSION OF NOTE.

3.1 Optional Conversion. The principal amount and all accrued and unpaid interest owing under this Note may be converted on the Maturity Date or thereafter (if this Note is not paid on the Maturity Date), in whole, into fully paid and non-assessable shares of the Individual's common stock ("Common Stock") as provided below. In the event that the Holder wishes to convert this Note into Common Stock, the Holder shall provide the Individual with notice (the "Conversion Notice"), at least fifteen (15) days prior to the Maturity Date, that the Holder wishes to convert the Note into shares of Common Stock. Following receipt of the Conversion Notice, the Individual shall have the option of either: (i) converting, on the Maturity Date, the principal amount and all accrued and unpaid interest owing into Common Stock per share (which is based on a Individual valuation at the Individual's capitalization as of the date hereof); or (ii) electing to prepay the Note prior to the Maturity Date in accordance with Section 2.

3.2 Individual to Provide Stock. The Individual shall at all times reserve and keep available out of the aggregate of its authorized but unissued capital stock or its issued capital stock held in its treasury, or both, for the purpose of effecting the conversion of this Note, such number of shares of capital stock or as shall then be issuable upon the conversion of this Note. The Individual covenants that all shares of capital stock issued on conversion of this Note shall be duly and validly issued and fully paid and non-assessable and free from

all taxes, liens and charges with respect to the issue thereof.

4. EVENTS OF DEFAULT.

4.1 Events of Default Defined. The principal and interest due and owing on this Note will become immediately due and payable, upon the consent of the Majority Holder, without notice, demand, protest, notice of protest and notice of default (other than as provided herein) presentment for payment and diligence in collection, all of which are expressly waived, if the Individual shall (i) breach any of its obligations under this Note; (ii) admit in writing its inability to pay its debts generally as they become due, (iii) file a petition in bankruptcy or petition to take advantage of any insolvency act, (iv) make an assignment for the benefit of its creditors, (v) consent to the appointment of a receiver of itself or of the whole of any substantial part of its property, (vi) on a petition in bankruptcy filed against it, be adjudicated as a bankrupt, (vii) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, or (viii) distribute any of its assets upon any dissolution, winding up, liquidation or reorganization of the Individual. For purposes hereof, each of the above events is hereafter referred to as an "Event of Default".

4.2 Notification. If an Event of Default as defined above shall occur, the Individual will notify the Holder promptly in writing by mail of the Event of Default

describing it in reasonable detail, including a statement of the nature and length of existence thereof, and what action the Individual proposes to take with respect thereto.

5. SUITS FOR ENFORCEMENT UPON DEFAULT.

If an Event of Default shall have occurred, then and in any such event the Holder may, at any time at its option, declare the principal of and the accrued interest due under the Note to be due and payable, whereupon the same shall forthwith mature and become due and payable without demand, protest, notice of protest and notice of default, presentment for payment and diligence in collection, all of which are hereby expressly waived by the Individual. In case any Event of Default shall occur, the Holder may proceed to protect and enforce its rights hereunder by a suit in equity, action at law or other appropriate proceeding. No course of dealing and no delay on the part of the Holder in exercising any rights shall operate as a waiver thereof or otherwise prejudice their rights and no consent or waiver shall extend beyond the particular case involved.

6. NOTICES.

Any request, demand, authorization, direction, notice, consent, waiver or other document permitted by this Note to be made upon, given or furnished to, or filed with the Individual or the Holder shall be sufficient for every purpose hereunder if in writing and mailed to the Individual, addressed to it at 1027 33rd

Street, Washington, DC 20007 (or such subsequent address as the Individual shall advise the Holder hereof in writing) and if to the Holder at the address at which payments are being made (or at such further address as the Holder hereof shall advise the Individual in writing). All notices required hereunder shall be deemed to have been given or made when actually delivered to or received by the party to which the notice is addressed at its respective address.

7. MUTILATION, DESTRUCTION, LOSS, OR REISSUANCE.

7.1 Mutilation. This Note, if mutilated, may be surrendered and thereupon the Individual shall execute and deliver in exchange therefore a new Note of like tenor and principal amount.

7.2 Destruction, Loss, Etc. If there is delivered to the Individual (i) evidence of the destruction, loss, or theft of this Note and (ii) such indemnity as may be required by it to save it harmless, then, in the absence of notice to the Individual that this Note has been acquired by a bona fide purchaser, the Individual shall execute and deliver in lieu of such destroyed, lost or stolen Note, a new Note of like tenor and principal amount.

8. SUCCESSORS.

All of the covenants, stipulations, promises and agreements in this Note contained by or on behalf of the Individual shall bind and inure to the benefit of its

successors whether so expressed or not and also to the benefit of the Holder and its successors.

9. GOVERNING LAW.

This Note shall be deemed to be a contract made under the laws of the Commonwealth of Virginia and for all purposes shall be construed in accordance with the laws of such state.

10. TRANSFERABILITY OF NOTE.

This Note and the shares of capital stock issuable upon conversion hereof are not transferable except pursuant to an effective registration statement under the Securities Act of 1933, as amended, or unless an exemption from the registration provisions of such Act is applicable.

[Remainder of Page Intentionally Left Blank]

78a

IN WITNESS WHEREOF, the Individual has caused this Note to be executed in its corporate name by its duly authorized officers and to be dated as of the day and year first above written,

INDIVIDUAL

By: /s/ Michael Han
Michael Han

THIS NOTE AND THE SHARES OF CAPITAL STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE AND ANY OF SUCH SHARES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF REGISTRATION UNDER SAID ACT AND ALL OTHER APPLICABLE SECURITIES LAWS, OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

CONVERTIBLE PROMISSORY NOTE

\$500,000

June 3, 2009

FOR VALUE RECEIVED, MICHAEL S. HAN/ ENVION INDUSTRIES, LLC (the "Individual"/ "Company"), a District of Columbia Limited Liability Company, hereby promises to pay to the order of Mr. James E. Russell (the "Holder") the sum of Five Hundred Thousand Dollars Only (\$500,000) with interest thereon from the date of issuance of this Note at the

rate set forth in Section 1.1 hereof All payments to be made by the Company in repayment of interest and principal hereunder shall be made in currency of the United States of America which at the time of payment shall be legal tender for the payment of public or private debts.

I. PAYMENTS OF PRINCIPAL AND INTEREST.

1.1 Rate of Interest For the period from the date hereof until all sums due hereunder, whether principal, interest, charges, fees or other minis, have been paid in full, interest shall accrue on the unpaid, principal balance of this Note at the simple rate of eight percent (8.00%) per annum. Interest on the outstanding principal balance of the Note will be computed on the basis of a 365-day year.

1.2 Principal and Interest Payment. Unless converted into shares, of the Company's capital stock in accordance with Section 3 hereof, the total amount of principal due under this Note and all accrued and unpaid interest thereon shall be paid in a single lump sum by the Company on September 3, 2009 (the "Maturity Date").

2. PREPAYMENTS PRIOR TO MATURITY.

Notwithstanding any other provisions of this Note, the Company may prepay the Note in whole or in part at any time without penalty. Any prepayments received with respect to this Note shall first be applied to the accrued but unpaid interest then outstanding, with the remainder; if any, applied to principal.

3. CONVERSION OF NOTE.

3.1 Optional Conversion. The principal amount and all accrued and unpaid interest owing under this Note may be converted on the Maturity Date or thereafter (if this Note is not paid on the Maturity Date), in whole, into fully paid and non-assessable shares of the Company's common stock ("Common Stock") as provided below. In the event that the Holder wishes to convert this Note into Common Stock, the Holder shall provide the Company with notice (the "Conversion Notice"), at least fifteen (15) days prior to the Maturity Date, that the Holder wishes to convert the Note into shares of Common Stock. Following receipt of the Conversion Notice, the Company shall have the option of either: (i) converting, on the Maturity Date, the principal amount and all accrued and unpaid interest owing into Common Stock per share (which is based on a Company valuation of \$18,000,000,000 and at the Company's capitalization as of the date hereof) for a total value of \$1,000,000; or (ii) electing to prepay the Note prior to the Maturity Date in accordance with Section 2; and (iii) the Company (at its sole discretion) also pays (iv) an additional conversion value of \$1,000,000 in Common Stock, contingent upon the successful commercial deployment of two additional technologies (tire gasification and landfill mining) for a total potential conversion distribution of \$2,000,000 in Common Stock.

3.2 Fractional Shares. No fractional shares of capital stock shall be issued upon conversion of this Note. Instead of any fractional share that would

otherwise be issuable upon conversion of this Note, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to the fair market value of such fractional interest as determined by the Board of Directors (whose good faith determination shall be conclusive).

3.3 Company to Provide Stock. The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued capital stock or its issued capital stock held in its treasury, or both, for the purpose of effecting the conversion of this Note, such number of shares of capital stock or as shall then be issuable upon the conversion of this Note. The Company covenants that all shares of capital stock issued on conversion of this Note shall be duly and validly issued and fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof.

4. EVENTS OF DEFAULT.

4.1 Events of Default Defined. The principal and interest due and owing on this Note will become immediately due and payable, at the option and only upon the consent of the Majority Holders, without notice, demand, protest, notice of protest and notice of default (other than as provided herein) presentment for payment and diligence in collection, all of which are expressly waived, if the Company shall (i) breach any of its obligations under this Note; (ii) admit in writing its inability to pay its debts generally as they become due, (iii) file a petition in bankruptcy or petition to take

advantage of any insolvency act, (iv) make an assignment for the benefit of its creditors, (v) consent to the appointment of a receiver of itself or of the whole of any substantial part of its property, (vi) on a petition in bankruptcy filed against it, be adjudicated as a bankrupt, (vii) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, or (viii) distribute any of its assets upon any dissolution, winding up, liquidation or reorganization of the Company. For purposes hereof, each of the above events is hereafter referred to as an “Event of Default”.

4.2 Notification. If an Event of Default as defined above shall occur, the Company will notify the Holder promptly in writing by mail of the Event of Default describing it in reasonable detail, including a statement of the nature and length of existence thereof, and what action the Company proposes to take with respect thereto.

5. SUITS FOR ENFORCEMENT UPON DEFAULT,

If an Event of Default shall have occurred, then and in any such event the Holder may, at any time at its option, declare the principal of and the accrued interest due under the Note to be due and payable, whereupon the same shall forthwith mature and become due and payable without demand, protest, notice of protest and notice of default, presentment for payment and diligence in collection, all of which are

hereby expressly waived by the Company. In case any Event of Default shall occur, the Holder may proceed to protect and enforce its rights hereunder by a suit in equity, action at law or other appropriate proceeding. No course of dealing and no delay on the part of the Holder in exercising any rights shall operate as a waiver thereof or otherwise prejudice their rights and no consent or waiver shall extend beyond the particular case involved.

6. NOTICES.

Any request, demand, authorization, direction, notice, consent, waiver or other document permitted by this Note to be made upon, given or furnished to, or filed with the Company or the Holder shall be sufficient for every purpose hereunder if in writing and mailed to the Company, addressed to it at 1027 33rd Street N.W., Washington, D.C 20007 (or such subsequent address as the Company shall advise the Holder hereof in writing) and if to the Holder at the address at which payments are being made (or at such further address as the Holder hereof shall advise the Company in writing). All notices required hereunder shall be deemed to have been given or made when actually delivered to or received by the party to which the notice is addressed at its respective address.

7. MUTILATION, DESTRUCTION, LOSS; OR REISSUANCE.

7.1 Mutilation. This Note, if mutilated, may be surrendered and thereupon the Company shall

execute and deliver in exchange therefore a new Note of like tenor and principal amount.

7.2 Destruction, Loss, Etc. If there is delivered to the Company (i) evidence of the destruction, loss, or theft of this Note and (ii) such indemnity as may be required by it to save it harmless, then, in the absence of notice to the Company that this Note has been acquired by a bona fide purchaser, the Company shall execute and deliver in lieu of such destroyed, lost or stolen Note, a new Note of like tenor and principal amount.

8. SUCCESSORS.

All of the covenants, stipulations, promises and agreements in this Note contained by or on behalf of the Company shall bind and inure to the benefit of its successors whether so expressed or not and also to the benefit of the Holder and its successors.

9. GOVERNING LAW.

This Note shall be deemed to be a contract made under the laws of the District of Columbia and for all purposes shall be construed in accordance with the laws of such state.

10. TRANSFERABILITY OF NOTE.

This Note and the shares of capital stock issuable upon conversion hereof are not transferable except pursuant to an effective registration statement under the Securities Act of 1933, as amended, or unless an

85a

exemption from the registration provisions of such Act is applicable.

[Remainder of Page intentionally Left Blank]

IN WITNESS WHEREOF, the Company has caused this Note to be executed in its corporate name by its duly authorized officers and to be dated as of the day and year first above written.

ENVION INDUSTRIES INDIVIDUAL

By: Michael S. Han

Michael S. Han

THIS NOTE AND THE SHARES OF CAPITAL STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE, AND ANY OF SUCH SHARES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF REGISTRATION UNDER SAID ACT AND ALL OTHER APPLICABLE SECURITIES LAWS, OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

CONVERTIBLE PROMISSORY NOTE

\$32,393,000

August 4, 2011

FOR VALUE RECEIVED, ENVION, INC. (the "Company"), a Delaware Corporation, hereby promises to pay to the order of Mr. Frank Carlucci (the "Holder") the sum of Thirty Two Million Three Hundred Ninety Three Thousand Only (\$32,393,000) with interest thereon from the date of issuance of this Note at the rate set forth in Section 1.1 hereof All payments to be

made by the Company in repayment of interest and principal hereunder shall be made in currency of the United States of America which at the time of payment shall be legal tender for the payment of public or private debts.

1. PAYMENTS OF PRINCIPAL AND INTEREST.

1.1 Rate of Interest For the period from the date hereof until all sums due hereunder, whether principal, interest, charges, fees or other sums, have been paid in full, interest shall accrue on the unpaid principal balance of this Note at the simple rate of five percent (5.00%) per annum. Interest on the outstanding principal balance of the Note will be computed on the basis of a 365-day year.

1.2 Principal and Interest Payment. Unless converted into shares of the Company's capital stock in accordance with Section 3 hereof, the total amount of principal due under this Note and all accrued and unpaid interest thereon shall be paid in a single lump sum by the Company on August 4, 2012 (the "Maturity Date").

2. PREPAYMENTS PRIOR TO MATURITY.

Notwithstanding any other provisions of this Note, the Company may prepay the Note in whole or in part at any time without penalty. Any prepayments received with respect to this Note shall first be applied to the accrued but unpaid interest then outstanding, with the remainder, if any, applied to principal.

3. CONVERSION OF NOTE.

3.1 Optional Conversion. The principal amount and all accrued and unpaid interest owing under this Note may be converted on the Maturity Date or thereafter (if this Note is not paid on the Maturity Date), in whole, into fully paid and non-assessable shares of the Company's common stock ("Common Stock") as provided below. In the event that the Holder wishes to convert this Note into Common Stock, the Holder shall provide the Company with notice (the "Conversion Notice"), at least fifteen (15) days prior to the Maturity Date, that the Holder wishes to convert the Note into shares of Common Stock. Following receipt of the Conversion Notice, the Company shall have the option of either: (i) converting, on the Maturity Date, the principal amount and all accrued and unpaid interest owing into Common Stock per share (which is based on a Company valuation of \$750,000,000 and at the Company's capitalization as of the date hereof); or (ii) electing to prepay the Note prior to the Maturity Date in accordance with Section 2.

3.2 Fractional Shares. No fractional shares of capital stock shall be issued upon conversion of this Note. Instead of any fractional share that would otherwise be issuable upon conversion of this Note, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to the fair market value of such fractional interest as determined by the Board of Directors (whose good faith determination shall be conclusive).

3.3 Company to Provide Stock. The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued capital stock or its issued capital stock held in its treasury, or both, for the purpose of effecting the conversion of this Note, such number of shares of capital stock or as shall then be issuable upon the conversion of this Note. The Company covenants that all shares of capital stock issued on conversion of this Note shall be duly and validly issued and fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof.

4. EVENTS OF DEFAULT.

4.1 Events of Default Defined. The principal and interest due and owing on this Note will become immediately due and payable, at the option and only upon the consent of the Majority Holders, without notice, demand, protest, notice of protest and notice of default (other than as provided herein) presentment for payment and diligence in collection, all of which are expressly waived, if the Company shall (i) breach any of its obligations under this Note; (ii) admit in writing its inability to pay its debts generally as they become due, (iii) file a petition in bankruptcy or petition to take advantage of any insolvency act, (iv) make an assignment for the benefit of its creditors, (v) consent to the appointment of a receiver of itself or of the whole of any substantial part of its property, (vi) on a petition in bankruptcy filed against it, be adjudicated as a bankrupt, (vii) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy

laws or any other applicable law or statute of the United States of America or any state thereof, or (viii) distribute any of its assets upon any dissolution, winding up, liquidation or reorganization of the Company. For purposes hereof, each of the above events is hereafter referred to as an "Event of Default".

4.2 Notification. If an Event of Default as defined above shall occur, the Company will notify the Holder promptly in writing by mail of the Event of Default describing it in reasonable detail, including a statement of the nature and length of existence thereof', and what action the Company proposes to take with respect thereto.

5. SUITS FOR ENFORCEMENT UPON DEFAULT.

If an Event of Default shall have occurred, then and in any such event the Holder may, at any time at its option, declare the principal of and the accrued interest due under the Note to be due and payable, whereupon the same shall forthwith mature and become due and payable without demand, protest, notice of protest and notice of default, presentment for payment and diligence in collection, all of which are hereby expressly waived by the Company. In case any Event of Default shall occur, the Holder may proceed to protect and enforce its rights hereunder by a suit in equity, action at law or other appropriate proceeding. No course of dealing and no delay on the part of the Holder in exercising any rights shall operate as a waiver thereof or otherwise prejudice their rights and

no consent or waiver shall extend beyond the particular case involved.

6. NOTICES.

Any request, demand, authorization, direction, notice, consent, waiver or other document permitted by this Note to be made upon, given or furnished to, or filed with the Company or the Holder shall be sufficient for every purpose hereunder if in writing and mailed to the Company, addressed to it at 1054 31st Street, Suite 300, Washington, D.C. 20007 (or such subsequent address as the Company shall advise the Holder hereof in writing) and if to the Holder at the address at which payments are being made (or at such further address as the Holder hereof shall advise the Company in writing). All notices required hereunder shall be deemed to have been given or made when actually delivered to or received by the party to which the notice is addressed at its respective address.

7. MUTILATION, DESTRUCTION, LOSS, OR REISSUANCE.

7.1 Mutilation. This Note, if mutilated, may be surrendered and thereupon the Company shall execute and deliver in exchange therefore a new Note of like tenor and principal amount.

7.2 Destruction, Loss, Etc. If there is delivered to the Company (i) evidence of the destruction, loss, or theft of this Note and (ii) such indemnity as may be required by it to save it harmless, then, in the absence of notice to the Company that this Note has been

acquired by *a bona fide purchaser*, the Company shall execute and deliver in lieu of such destroyed, lost or stolen Note, a new Note of like tenor and principal amount.

8. SUCCESSORS.

All of the covenants, stipulations, promises and agreements in this Note contained by or on behalf of the Company shall bind and inure to the benefit of its successors whether so expressed or not and also to the benefit of the Holder and its successors.

9. GOVERNING LAW.

This Note shall be deemed to be a contract made under the laws of the Commonwealth of Virginia and for all purposes shall be construed in accordance with the laws of such state.

10. TRANSFERABILITY OF NOTE.

This Note and the shares of capital stock issuable upon conversion hereof are not transferable except pursuant to an effective registration statement under the Securities Act of 1933, as amended, or unless an exemption from the registration provisions of such Act is applicable.

[Remainder of Page Intentionally Left Blank]

93a

IN WITNESS WHEREOF, the Company has caused this Note to be executed in its corporate name by its duly authorized officers and to be dated as of the day and year first above written.

ENVION, INC.

By: Michael Han
Michael Han, CEO

How the IRS Evaluates Shareholder Loans

- (1) Shareholder Control over the Corporation;
- (2) Does the Corporation have a History of Paying Dividends;
- (3) The Existence of Corporate Earnings & Profits;
- (4) The Amount of the Loans and Whether there is a Ceiling to Limit the Amount Advanced;
- (5) How the Parties Recorded the S/H Loan in the Corporate Books and Records;

How The IRS Evaluates Shareholder Loans

- (6) Are there Executed Notes;
- (7) Did the S/H Provide Security/Collateral for the Advance;
- (8) Was there a Fixed Schedule of Repayment;
- (9) Did the S/H Make Any Payments;
- (10) Whether Interest was Paid or Accrued;

How The IRS Evaluates Shareholder Loans

(11) Did the S/H have the Ability to Repay; and

(12) Are the Advances to the S/H Proportionate to Stake in Company.

The list is not exhaustive and no single factor, standing alone, is dispositive.

Each factor is considered with all the facts and circumstances that are present.

United States v. Michael Han
Statutory Addendum

26 U.S.C. § 7201 – Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S.C. § 61 – Gross income defined

(a) General definition.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Annuities;

- (9) Income from life insurance and endowment contracts;
 - (10) Pensions;
 - (11) Income from discharge of indebtedness;
 - (12) Distributive share of partnership gross income;
 - (13) Income in respect of a decedent; and
 - (14) Income from an interest in an estate or trust.
- [(15) Redesignated (14)]

(b) Cross references.—For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).
