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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) CASE NO.: 1:08-CR-0427 OWW
11)
Plaintiff,)
12) MEMORANDUM OF PLEA AGREEMENT
13)
v.)
14)
RUBY DEE VANCE,)
15)
Defendant.)
16)

17
18 Pursuant to Rule 11(c) of the Federal Rules of Criminal
19 Procedure, the United States of America, by and through Lawrence G.
20 Brown, the Acting United States Attorney for the Eastern District of
21 California, and Assistant United States Attorney Kirk E. Sherriff;
22 and defendant, Ruby Dee Vance, and her attorney, Ann H. Voris, have
23 agreed as follows:

24 1. Scope of Agreement

25 This document contains the complete Plea Agreement between the
26 United States Attorney's Office for the Eastern District of
27 California ("United States") and defendant Ruby Dee Vance
28 regarding this case. This Plea Agreement is limited to the United

1 States Attorney's Office for the Eastern District of California and
2 cannot bind any other federal, state, or local prosecuting,
3 administrative, or regulatory authorities.

4 2. Charges

5 Defendant Ruby Dee Vance acknowledges that she has been charged
6 in the Indictment with one count as follows:

7 Theft of Mail by United States Postal Service
8 Employee, in violation of Title 18, United States
9 Code, Section 1709.

10 3. Nature, Elements and Possible Defenses

11 Defendant Ruby Dee Vance has read the charge against her
12 contained in the Indictment, and that charge has been fully explained
13 to her by her attorney. Further, defendant fully understands the
14 nature and elements of the crime in the Indictment to which she is
15 pleading guilty, together with the possible defenses thereto, and has
16 discussed them with her attorney.

17 The elements of the crime of Theft of Mail by United States
18 Postal Service Employee, in violation of Title 18, United States
19 Code, Section 1709, are:

20 First, while working as a Postal Service employee, the
21 defendant had possession of a letter, package, or
22 other item that was being sent through the mail; and
23 Second, the defendant took it, knowing that it belonged to
24 someone else.

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1 4. Agreements by Defendant Ruby Dee Vance

2 (a) Defendant agrees that this Plea Agreement shall be filed
3 with the Court and become a part of the record of the case.

4 (b) Defendant agrees to enter a plea of guilty to the
5 Indictment, which charges defendant with Theft of Mail by United
6 States Postal Service Employee, in violation of Title 18, United
7 States Code, Section 1709. Defendant agrees that she is in fact
8 guilty of this charge and that the facts in the Factual Basis set out
9 below in Section 6 are accurate.

10 (c) Defendant understands and agrees that she will not be
11 allowed to withdraw her plea should the Court fail to follow the
12 government's sentencing recommendations.

13 (d) Defendant further acknowledges that her plea of guilty is
14 voluntary and that no force, threats, promises or representations
15 have been made to anybody, nor agreement reached, other than those
16 set forth expressly in this agreement, to induce defendant to plead
17 guilty.

18 (e) Defendant agrees that the applicable base offense level in
19 this case is six (6) pursuant to Section 2B1.1 of the 2008 United
20 States Sentencing Commission Guidelines Manual.

21 (f) Defendant agrees not to move for a downward departure of
22 her sentence in this case, including, but not limited to, a downward
23 departure of her offense level, criminal history category, or
24 criminal history points as defined by the United States Sentencing
25 Guidelines.

26 (g) Defendant agrees that the conduct to which she is pleading
27 guilty requires mandatory restitution pursuant to Section
28 3663A(c) (1) (A) (ii) of Title 18, United States Code, and agrees to pay

1 the full amount of restitution as ordered by the Court to all victims
2 affected by this offense, including but not limited to any victims
3 covered in the Factual Basis, pursuant to 18 U.S.C. § 3663A(a)(3).
4 Defendant further agrees that she will not seek to discharge any
5 restitution obligation, or any part of such obligation, in any
6 bankruptcy proceeding.

7 (h) Defendant knowingly and voluntarily waives her
8 Constitutional and statutory rights to appeal her plea, conviction,
9 and sentence imposed in this case. This waiver of appeal includes,
10 but is not limited to, an express waiver of defendant's right to
11 appeal her plea, conviction, and sentence on any ground, including
12 the waiver of any appeal right conferred by 18 U.S.C. § 3742.

13 (i) Defendant also gives up any right she may have to bring a
14 post-appeal attack on her conviction or sentence. Defendant
15 specifically agrees not to contest her plea, conviction, or sentence
16 in any post-conviction proceeding, including but not limited to a
17 proceeding under 28 U.S.C. §§ 2241 or 2255.

18 (j) If defendant ever attempts to vacate her plea, dismiss the
19 underlying charges, or reduce or set aside her sentence on any
20 count(s) to which she is pleading guilty, the United States shall
21 have the right (1) to prosecute defendant on any and all count(s) to
22 which she pleaded guilty, and (2) to file any new charges that would
23 otherwise be barred by this Plea Agreement. The decision to pursue
24 any or all of these options is solely in the discretion of the United
25 States Attorney's Office. By signing this Plea Agreement, defendant
26 agrees to waive any objections, motions, and defenses she might have
27 to the government's decision. Defendant specifically agrees not to
28 raise any objections based on the passage of time with respect to

1 such counts including, but not limited to, any statutes of limitation
2 or any objections based on the Speedy Trial Act or the Speedy Trial
3 Clause of the Sixth Amendment.

4 (k) If it is determined that defendant has violated any
5 provision of this Plea Agreement or if defendant successfully moves
6 to withdraw her plea: (1) all statements made by defendant to the
7 United States or other designated law enforcement agents, or any
8 testimony given by defendant before a grand jury or other tribunal,
9 whether before or after this Plea Agreement, shall be admissible in
10 evidence in any criminal, civil, or administrative proceedings
11 hereafter brought against defendant; and (2) defendant shall assert
12 no claim under the United States Constitution, any statute, Rule
13 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the
14 Federal Rules of Evidence, or any other federal rule, that statements
15 made by defendant before or after this Plea Agreement, or any leads
16 derived therefrom, should be suppressed. By signing this Plea
17 Agreement, defendant waives any and all rights in the foregoing
18 respects.

19 (l) Defendant agrees to waive all rights under the "Hyde
20 Amendment," Pub. L. No. 105-109, § 617, 111 Stat. 2519 (1997), to
21 recover attorneys' fees or other litigation expenses in connection
22 with the investigation and prosecution of all charges in the above-
23 captioned matter and of any related allegations (including without
24 limitation any charges to be dismissed pursuant to this Plea
25 Agreement and any charges previously dismissed).

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1 5. Agreements by the United States

2 (a) The United States will recommend a two-level reduction (if
3 the offense level is less than 16) or a three-level reduction (if the
4 offense level reaches 16) in the computation of defendant's offense
5 level, if defendant clearly demonstrates acceptance of responsibility
6 for her conduct as defined in Section 3E1.1 of the United States
7 Sentencing Commission Guidelines Manual.

8 (b) The United States agrees that, if defendant abides by all
9 of her terms of pre-trial release and is not placed in custody pre-
10 trial or pre-sentencing as a result of any violation of her release
11 conditions, if defendant's guideline range after any adjustments
12 falls within:

- 13 i. Zone A of the Sentencing Table, the United States will
14 recommend that defendant be sentenced to three (3)
15 years probation;
- 16 ii. Zone B of the Sentencing Table, then the United States
17 will recommend that defendant be sentenced to three
18 (3) years of probation with a condition of probation
19 that the defendant serve the minimum term of the
20 guideline range in home detention;
- 21 iii. Zone C or D of the Sentencing Table, the United States
22 will recommend that defendant be sentenced to the low
23 end of the applicable guideline range, and to a three
24 (3) year term of supervised release.

25 (c) Defendant acknowledges and understands that the United
26 States makes no other representations to her regarding sentencing,
27 including regarding fines, her criminal history or criminal history
28 points under Chapter Four of the United States Sentencing Guidelines,

1 or whether additional enhancements or reductions under Chapter Three
2 of the United States Sentencing Guidelines apply. Defendant
3 understands that, except insofar as specifically addressed above, the
4 United States is free to comment and make recommendations to the
5 Court and the probation office regarding such matters.

6 6. Factual Basis

7 Defendant will plead guilty because she is in fact guilty of the
8 crime set forth in the Indictment. Defendant also agrees that the
9 following are the facts of this case, although she acknowledges that,
10 as to other facts, the parties may disagree:

11 Beginning no later than in or about May 2008 and
12 continuing through on or about August 21, 2008,
13 in the State and Eastern District of California
14 and elsewhere, defendant Ruby Dee Vance
15 knowingly, intentionally, and unlawfully stole
16 letters, packages, and mail, and articles and
17 things contained therein, which were entrusted to
18 her as a U.S. Postal Service employee and which
19 came into her possession intended to be conveyed
20 by mail. At all relevant times, defendant was a
21 United States Postal Service employee serving as
22 a rural postal carrier.

23 Specific instances of defendant's thefts of
24 letters, packages, and mail that had been
25 entrusted to her as a U.S. Postal Service
26 employee, and that came into her possession
27 intended to be conveyed by mail to addresses on
28 her Postal Service route, include:

- 21 i. On or about May 11, 2008, defendant stole a
22 letter containing an eighty dollar (\$80)
23 Wal-Mart gift card. Defendant knew that the
24 letter and gift card did not belong to her.
25 Defendant provided the \$80 Wal-Mart gift
26 card to her husband, Heath Smith, who made
27 purchases with the card at Wal-Mart.
- 28 ii. On or about July 25, 2008, defendant stole a
QVC package containing a bracelet.
Defendant knew that the package and bracelet
did not belong to her.

1 7. Potential Sentence

2 The following is the maximum potential sentence that defendant
3 faces on the charge in the Indictment:

4 (a) Imprisonment.

5 Maximum: Five (5) years.

6 (b) Fine.

7 Maximum: Two Hundred and Fifty Thousand
8 (\$250,000.00).

9 (c) Both such fine and imprisonment.

10 (d) Restitution - Mandatory.

11 (e) Term of Supervised Release:

12 Maximum: Three (3) years.

13 (Should the defendant violate any of the terms of her
14 supervised release, she can be returned to prison for
15 the period of supervised release actually imposed by
16 the Court or two (2) years, whichever is less.)

17 (f) Penalty Assessment.

18 Mandatory: One Hundred (\$100.00).

19 8. Waiver of Rights

20 (a) Defendant understands that by pleading guilty she is
21 waiving certain rights, including the following: (1) to plead not
22 guilty and to persist in that plea if already made; (2) to be tried
23 by a jury; (3) to be represented at trial by an attorney, who would
24 be appointed if necessary; (4) to subpoena witnesses to testify on
25 her behalf; (5) to confront and cross-examine witnesses against her;
26 and (6) not to be compelled to testify, and that no inference of
27 guilt could be drawn from such refusal to testify.

28 (b) Defendant understands that by pleading guilty she is
waiving all of the rights set forth above. Defendant acknowledges
that her attorney has explained to her those rights and the

1 consequences of her waiver of such rights.

2 9. Right to Counsel

3 Defendant understands that she has a right to counsel throughout
4 her case from her initial appearance through her trial or guilty
5 plea, or any dismissal of the case against her, and through and
6 including any sentencing. If not for the waiver of appeal rights in
7 this Plea Agreement, defendant would also have a right to counsel on
8 a direct appeal in her case. Defendant understands that the right to
9 counsel includes the provision of defense counsel through the Court
10 if defendant cannot afford to hire counsel.

11 10. Questions by Court

12 Defendant understands that, if the Court questions her under
13 oath, on the record, and in the presence of counsel about the offense
14 to which she has pleaded guilty, her answers, if false, may later be
15 used against her in a prosecution for perjury.

16 11. Entire Plea Agreement

17 (a) Other than this Plea Agreement, no agreement,
18 understanding, promise, or condition exists between the United States
19 and defendant. Nor will any such agreement, understanding, promise,
20 or condition exist unless it is committed to writing and signed by
21 defendant, counsel for defendant, and counsel for the United States.

22 (b) This plea of guilty is freely and voluntarily made and is
23 not the result of force or threats, or of any promises apart from
24 those specifically set forth in this Plea Agreement.

25 12. Court not a Party

26 (a) It is understood by the parties that the sentencing Court
27 is neither a party to nor bound by this agreement. Sentencing is a
28 matter solely within the discretion of the Court. The Court is under

1 no obligation to accept any recommendations made by the United
2 States, and the Court may in its discretion impose any sentence it
3 deems appropriate up to and including the statutory maximum set forth
4 in Section 7 above.

5 (b) Defendant understands that the Court must consult the
6 Federal Sentencing Guidelines (as promulgated by the Sentencing
7 Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C.
8 §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United
9 States v. Booker and United States v. Fanfan, 543 U.S. 220, 125
10 S. Ct. 738 (2005)), and must take them into account when determining
11 a final sentence. Defendant understands that the Court will
12 determine a non-binding and advisory guideline sentencing range for
13 this case pursuant to the Sentencing Guidelines. Defendant further
14 understands that the Court will consider whether there is a basis for
15 departure from the guideline sentencing range (either above or below
16 the guideline sentencing range) because there exists an aggravating
17 or mitigating circumstance of a kind, or to a degree, not adequately
18 taken into consideration by the Sentencing Commission in formulating
19 the Guidelines. Defendant further understands that the Court, after
20 consultation and consideration of the Sentencing Guidelines, must
21 impose a sentence that is reasonable in light of the factors set
22 forth in 18 U.S.C. § 3553(a).

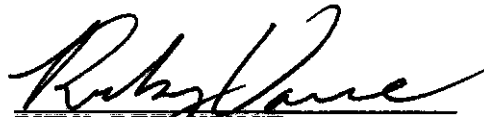
23 (c) In making its sentencing decision, the Court may take into
24 consideration any and all facts and circumstances concerning
25 defendant's criminal activities, including activities which may not
26 have been charged in the Indictment. If the Court should impose any
27 sentence up to the statutory maximum, defendant understands that she
28 cannot for that reason withdraw her guilty plea, and she will remain

1 bound to fulfill all of the obligations under this Plea Agreement.
2 Defendant understands that neither the prosecutor, defense counsel,
3 nor the Court can make or have made any promise regarding the
4 sentence defendant will receive.


5 13. Presentence Report

6 Defendant understands that the United States Probation Office is
7 not a party to this agreement and will conduct an independent
8 investigation of defendant's activities and his background. It will
9 then prepare a presentence report which it will submit to the Court
10 as its independent sentencing recommendation. In addition, the
11 United States will fully apprise the Probation Office, as well as the
12 Court, of the full and true nature, scope and extent of defendant's
13 criminal activities, including information on her background and
14 criminal history.

15
16 Dated: 9-24-09

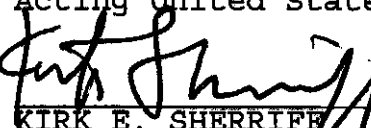

RUBY DEE VANCE
Defendant

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20 Dated: 9-24-09


ANN H. VORIS
Assistant Federal Defender
Attorney for Defendant

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24
25 Dated: 9-28-09

LAWRENCE G. BROWN
Acting United States Attorney

26
27 By: 
KIRK E. SHERRIFF
Assistant U.S. Attorney