

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) No. 11-00212-01-CR-W-HFS
)
)
MARIAN FINE-KENNEDY,)
)
)
Defendant.)

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Beth Phillips, United States Attorney, and Daniel M. Nelson, Assistant United States Attorney, and the defendant, Marian Fine-Kennedy ("the defendant"), represented by Gina L. Simone. The defendant understands and agrees that this plea agreement is only between her and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count 1 of the Information charging her with a violation of 18 U.S.C. § 287, that is, willful filing of a false tax refund. By entering into this plea agreement, the defendant admits that she knowingly committed this offense, and is in fact guilty of this offense.

3. **Factual Basis for Guilty Plea.** The parties agree that the facts constituting the offense to which she is pleading guilty are as follows (the below factual basis provides a summary of **Fine-Kennedy's** involvement and is not an exhaustive recitation of her or any conspirator's involvement):

Overview of Conspiracy

From on or about July 1, 2008, through at least April 27, 2009, G.P. (a/k/a Brother Jerry Love), and others in the Western District of Missouri and elsewhere, knowingly and willfully agreed, combined, and conspired with each other to defraud the United States, by obtaining and attempting to obtain payment of false claims through a fraudulent income tax refund scheme, described below as G.P.'s 1099-Original Issue Discount ("OID") Process. Beginning around 2007, in an attempt to find a new way to fraudulently inflate withholdings, after trial and error experimentation, G.P. and others around the country seized on OID. OID is an obscure type of taxable interest derived from bonds, notes or other long-term debt instruments that were originally issued for a lower price than their redemption price at maturity. Taxpayers must report any OID as it accrues, even if they have not yet received any payments from the debt issuer. G.P. and others began falsely claiming large OID on tax returns in order to dramatically inflate their claimed withholdings, thereby making the taxpayer appear to be entitled to large refunds. Originally, they filed false OID over-withholding claims in their own names. Through online chat groups and later at seminars held by G.P. and others, word spread, and they began refining their techniques. G.P. and others began recruiting "clients" to submit false claims. In exchange, the conspirators received a fee, and/or a percentage of any refunds paid out. In reality, none of the conspirators or their clients earned any OID, and the figures listed were simply sums of debts and spending. Marian **Fine-Kennedy** agreed to participate in G.P.'s OID process, through

branch manager K.J., beginning at least in April 2009. **Fine-Kennedy**'s specific involvement is detailed after the Background section below.

Background

G.P. resided at 5013 Pebble Avenue, Kansas City, Missouri. G.P. maintained an office, where he also taught karate, at 1052 Southwest Luttrell, Suites E and F, Blue Springs, Missouri. G.P.'s "1099-OID Process" was a tax refund scheme. First, G.P. recruited Branch Managers and Affiliates through conference calls and seminars he conducted at hotels across the United States. These Branch Managers and Affiliates (G.P.'s terms) were tasked with recruiting clients. G.P. then instructed and assisted the clients in seeking large refunds based on false claims that they had withheld large amounts of OID. Often the clients' returns falsely reflected hundreds of thousands or millions of dollars in OID income. They itemized this purported OID investment income on Schedule B on their personal tax returns. In actuality, the clients had neither earned nor withheld any OID income. By claiming OID income, the clients increased their Adjusted Gross Income, thereby increasing the taxes they owed to the United States.

In order to receive a refund, G.P. instructed the clients to falsely claim that they had already withheld and paid 95 percent to 100 percent of this OID income. In other words, their returns reflected they had overpaid their taxes by hundreds of thousands or millions of dollars. This made them appear to be entitled to huge refunds. As a result, because this obscure method was not yet a red flag to the IRS, clients of the scheme sometimes were successful in receiving refunds, including for hundreds of thousands of dollars. Word of these pay outs spread through chat rooms and by word of mouth in certain communities, stoking interest in the scheme and enabling the conspirators to recruit additional clients. After a while, IRS detected the fraud and began denying most of these bogus claims.

Nonsensibly, to “calculate” a client’s false OID income amount, G.P. instructed clients to aggregate the “flow” of money through the client’s bank account and/or aggregated the client’s debt, including but not limited to mortgages, credit cards, car loans, student loans and past tax debts. Once an aggregated amount was determined, the clients then falsely claimed it as OID income even though real OID income has nothing to do with “flow” or debt. For example, at the conspirators’ direction, a client who had a \$275,000 mortgage and a \$25,000 car loan would falsely report to the IRS that he earned \$300,000 in OID investment income. That client would also falsely report that he or she withheld \$285,000 to \$300,000 of that investment income, thus making it appear they were due a large refund since the percentage paid would appear to exceed the client’s tax due.

The IRS manages a website named FIRE (Filing Information Returns Electronically), which allows an entity to file information returns such as Forms 1099-OID and 1099-A electronically. The IRS can use this information to match income and federal withholding claimed on an individual’s tax return with that reported on FIRE. This is similar to matching the W-2 figures provided by an employee with those numbers provided directly to the IRS by the employer. In order to file information returns on FIRE an entity must obtain a TCC (Transmitter Control Code) using Form 4419 (Application for Filing Information Returns Electronically). Once the Form 4419 is approved by IRS’s Enterprise Computing Center in Martinsburg, West Virginia, the applicant will receive an approval letter and be assigned a 5-character TCC. The TCC is used as an identifier so that the source of transmitted files can be traced.

G.P. and his conspirators further tried to make these fraudulent filings appear legitimate by filing false Form 1099s through the IRS’s FIRE system (Filing Information Returns Electronically). The false Form 1099s were designed to “backstop,” or provide proof of, the

fraudulently-claimed OID income, in much the same way an employer files a W-2 to support the wage income claimed by an employee. If a taxpayer were to actually earn legitimate OID income, the issuing financial institution would be required to file a Form 1099 with the IRS. It would reflect the OID interest income earned by the taxpayer, as well as any federal withholdings. If the IRS questioned a claim, the amount reported by the financial institution could be compared with the amount reported by the taxpayer to ensure the proper reporting, just as a taxpayer's reported wages could be compared with the W-2 filed by the taxpayer's employer.

Defendant Fine-Kennedy's Involvement in G.P.'s 1099 OID Process

Marian **Fine-Kennedy** has a Bachelor of Science in Mathematics from the University of Nevada, Reno. She is currently employed at Pioneer Pacific College where she is an instructor of Excel, Word, Algebra and business calculators. **Fine-Kennedy** was living in the same house as L.F. during the time she became involved with G.P.'s 1099-OID process. At the time, **Fine-Kennedy** was attempting to become a singer and actor. L.F. owns Dreamaker Center in California which is a non-profit that trains aspiring singers and actors, based out of her residence. K.S. was a close friend of L.F. and **Fine-Kennedy**, and she visited often.

K.S. recruited and "coached" **Fine-Kennedy** regarding the 1099-OID process. K.S. provided a link to a pre-recorded call, approximately 1.5 hours long, which consisted of G.P. discussing how to engage in his 1099-OID process. After listening, **Fine-Kennedy** did not fully understand the 1099-OID process. K.S. reassured her that it was legal, telling stories of others who had received large amounts of money. K.S. put **Fine-Kennedy** in touch with K.J., who lived in Georgia. **Fine-Kennedy** followed the steps that K.J. advised her to take. K.J. requested

the total of all of **Fine-Kennedy**'s bank statements (flows) and credit cards for the previous year as well as other tax information.

Fine-Kennedy gave K.J. a \$500 check to begin the 1099-OID process. K.J. required her to sign a contract that contained a non-disclosure provision listing a \$20,000,000 fine for disclosure, and it required certification by **Fine-Kennedy** that she was not affiliated with the IRS, FBI, or CIA. **Fine-Kennedy** admits that such provisions were strange, but she "didn't want to face reality," and at the time she believed "ignorance is bliss." **Fine-Kennedy** agreed to pay 15% of her refund split between K.J. and G.P. (7.5% each). K.S. further advised her of the 10% fee that was due to be paid to D.C.

K.J. put together **Fine-Kennedy**'s tax return and mailed it to her for signature and filing. **Fine-Kennedy** mailed in her 2008 tax return on April 28, 2009, from Los Angeles, California. On May 28, 2009, **Fine-Kennedy**'s father, G.F., sent her an email explaining suspicions he had after hearing about the 1099-OID process. He wrote that these suspicions had been confirmed by his CPA and tax accountant, and that the 1099-OID process was a scam. The first sentence read "Mar - I know this is the last thing you want to hear or read, but anyway I hope to God you didn't sign and mail that 1040 Tax return to the IRS." **Fine-Kennedy** ignored the warning because she "wanted the money" and partly because she "thought we could get away with it...If it was illegal, I didn't really want to know." **Fine-Kennedy** admits that she did not receive \$89,605 in interest or ordinary dividends as was claimed on her 2008 Schedule B, nor did she have associated federal withholdings of \$85,092, and she was not entitled to a refund of \$61,959. In actuality, **Fine-Kennedy** did not receive any actual Forms 1099-OID or 1099-A, nor did she provide any such forms to G.P., K.J., K.S., D.C., or L.F.

On May 22, 2009, **Fine-Kennedy** received her requested refund of \$61,959 into her Bank of America account. She disbursed the majority of her 2008 tax refund as follows:

- A) Cash withdrawal \$1,900 on 5/26/09;
- B) Check 1477 \$3,000 on 5/29/09 for L.F.'s lease payment;
- C) Check 1479 \$265 on 5/27/09 for catering for L.F.'s show;
- D) Check 1480 \$313 on 5/29/09 for renewal for L.F.'s vehicle;
- E) Check 1487 \$1,500 on 5/26/09 for a debt of L.F.'s;
- F) Check 1488 \$6,000 on 5/26/09 (cash), all but approximately \$100 went to L.F.;
- G) \$1,000 transfer to pay her father back for a loan;
- H) Check 1491 \$1,842 on 5/28/09 to L.F.'s Dreamaker Center;
- I) Check 1494 \$1,300 on 5/29/09 to Dreamaker Center for future rent to L.F.;
- J) Check 1493 \$600 on 5/29/09 to a musician friend of L.F.'s for studio time;
- K) \$6,196 on 6/2/09 to D.C.;
- L) Check 1490 \$6,000 on 6/2/09 to Spokane Coin Exchange, for \$3,500 in gold and silver for L.F., and \$2,500 worth for herself; it was placed in L.F.'s safe;
- M) Check 1489 \$3,000 on 6/4/09 to **Fine-Kennedy**'s sister to hold money;
- N) Cash withdrawal \$8,100 on 6/5/09, given to K.S. to set aside for **Fine-Kennedy**'s California state tax bill;
- O) Check 1498 \$3,000 on 6/5/09 to Dreamaker Center for tuition;
- P) Check 1499 \$4,647 on 6/5/09 to L.F. to set aside for G.P.'s fees;
- Q) Check 1500 \$1,500 on 6/5/09 to L.F. for future auditions;
- R) Cash withdrawal \$1,000 on 6/5/09; and
- S) Wire transfer \$4,117 on 6/12/09 for the 7.5% fee to K.J.

Fine-Kennedy referred a musician friend, D.D., to the process in an email dated June 12, 2009. D.D. was interested in the 1099-OID process once he heard that **Fine-Kennedy** received a check. **Fine-Kennedy** also referred her sister, M.K., to the OID process. M.K. sent her paperwork to K.J. After M.K.’s tax return was filed, she received a bill from the IRS for over \$80,000, “got scared,” and eventually filed a “regular” tax return. **Fine-Kennedy** believes that M.K. also signed a contract and paid K.J. \$500 up-front. K.J. created a letter for M.K. in response to the bill she received from the IRS. **Fine-Kennedy** explained that she did not call the IRS or consult a credentialed tax professional after learning of her sister’s IRS letter because she “wanted to think it would work”... “at the time, this is the way to get money...like magic, a fairytale.”

From her refund, **Fine-Kennedy** agreed to give L.F. \$19,000 because, as L.F. suggested, it seemed fair to split the balance of her refund (after fees) since L.F. had pushed **Fine-Kennedy** to complete the process and had helped support her after her disability payments expired. In addition to the above, **Fine-Kennedy** wrote many smaller checks for L.F.’s benefit after reading instructions from D.C. to refrain from making any large withdrawals which might “raise red flags,” encouraging her to keep all transactions under \$2,000. These instructions were forwarded by K.S. K.S. also asked **Fine-Kennedy** for some of the refund money, but L.F. would not allow it. **Fine-Kennedy** believes that K.S. was also trying to do the 1099-OID process because she looked up information for K.S. at her request on topics such as EINs. **Fine-Kennedy** left L.F. and K.S. in Los Angeles, without notice, in July 2009. **Fine-Kennedy** never received the money back that K.S. and L.F. were supposedly keeping for her.

K.J. also prepared and filed **Fine-Kennedy**'s 2008 California state return in October 2009. **Fine-Kennedy** did not want to file the state return because she did not have the money to pay the tax. **Fine-Kennedy** has not amended her 2008 federal or California state tax returns. **Fine-Kennedy** first received IRS letters regarding her 2008 tax returns at the end of 2010 or in early 2011. D.C. sent an email dated July 9, 2009, advising that G.P. was back in business and had just completed a "dynamite call" and added "we are on our way again for our refunds." **Fine-Kennedy** first heard about a search warrant at one of G.P.'s locations from K.S.

By entering into this plea agreement, the defendant agrees that the aforementioned facts, as well as the facts in the government's information, are true and correct. Further, she specifically consents to venue in the Western District of Missouri.

4. Use of Factual Admissions and Relevant Conduct. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining her guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the Information as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charge to which she is pleading guilty.

5. Statutory Penalties. The defendant understands that upon her plea of guilty to Count One of the Information charging her with conspiracy to defraud the Government with respect to claims, the maximum penalty the Court may impose is not more than five years of

imprisonment, a \$250,000 fine, three years of supervised release, an order of restitution and a \$100 mandatory special assessment per felony count of conviction which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class D felony.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

- a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";
- b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;
- c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to 3 years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;
- d. if the defendant violates a condition of her supervised release, the Court may revoke her supervised release and impose an additional period of imprisonment of up to 2 years without credit for time previously spent on supervised release. In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed 3 years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;
- e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;
- f. any sentence of imprisonment imposed by the Court will not allow for parole;
- g. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

- h. the defendant may not withdraw her guilty plea solely because of the nature or length of the sentence imposed by the Court.
 - i. The defendant agrees that the United States may institute civil, judicial or administrative forfeiture proceedings against all forfeitable assets in which the defendant has an interest, and that she will not contest any such forfeiture proceedings.
 - j. The defendant agrees to forfeit all interests she owns or over which she exercises control, directly or indirectly, in any asset that is subject to forfeiture to the United States either directly or as a substitute for property that was subject to forfeiture but is no longer available for the reasons set forth in 21 U.S.C. § 853(p). With respect to any asset which the defendant has agreed to forfeit, the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution.
 - k. The defendant agrees to fully and truthfully disclose the existence, nature and location of all assets forfeitable to the United States, either directly or as a substitute asset, in which she and her co-conspirators have or had any direct or indirect financial interest, or exercise or exercised control, directly or indirectly, during the period from 2007 to the present. The defendant also agrees to fully and completely assist the United States in the recovery and forfeiture of all such forfeitable assets.
 - l. The defendant agrees to take all necessary steps to comply with the forfeiture matters set forth herein before her sentencing.
 - m. Within 10 days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that the United States will use the financial information when making its recommendation to the Court regarding the defendant's acceptance of responsibility.
 - n. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of forfeitable assets and restitution.

7. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of her criminal activities. The defendant understands these disclosures are not limited to the count to which she has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

8. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to conspiracy to defraud the Government with respect to the 1099-OID fraudulent tax refund scheme for which it has venue and which arose out of the defendant's conduct described above.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives her right to challenge the initiation of the dismissed or additional charges against her if she breaches this agreement. The defendant expressly waives her right to assert a statute of limitations defense if the dismissed or additional charges are initiated against her following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against her following her breach of this plea agreement, she will not be allowed to withdraw her guilty plea.

9. Cooperation. Defendant agrees to cooperate fully and truthfully with law enforcement agents investigating criminal activity in the Western District of Missouri and elsewhere. That cooperation includes providing full, complete, and honest statements regarding her knowledge of such activity; actively cooperating in corroborating the information she provides; and testifying fully and truthfully if called as a witness before any Grand Jury, any trial, or any other related proceeding. In particular, the defendant agrees:

- a. to provide truthful, complete, and accurate information and testimony in the trial of this matter or in any related hearing;
- b. to provide all information concerning her knowledge of, and participation in, the offenses charged in the Information, and any other crimes about which she has knowledge;
- c. to submit to a polygraph examination if requested to do so by counsel for the United States;

d. she will not falsely implicate any person or entity and will not protect any person or entity through false or misleading information or omission and that all information she provides will be truthful, complete, and accurate;

e. to testify as a witness before any grand jury, hearing, or trial when requested to do so by the United States;

f. to hold herself reasonably available for any interviews the United States may require. Defendant waives any right to the presence of counsel at such meetings, debriefings, or pretrial preparation sessions. The parties agree that no prior consultation with defendant's attorney shall be necessary to conduct these meetings, debriefings or interviews, unless defendant's attorney specifically requests such notice;

g. to provide the United States with all documents or other items under her control which may pertain to any criminal violation;

h. to cooperate with any local, state, and federal law enforcement agency as requested by counsel for the United States;

i. to continue her cooperation after the time she is sentenced if requested to do so by the United States. Failure to continue to cooperate after sentence is imposed constitutes a basis to void this agreement by the United States and will allow the Government to pursue any remedy for defendant's breach including, by way of illustration and not by way of limitation, re-instituting charges that are dismissed pursuant to this agreement; and

j. in the event she is released on bail, to the use of a device placed on her person for the purpose of electronically monitoring her location.

Defendant understands that the United States will tolerate no deception from her. If, in the good faith estimation of the United States, defendant's information or testimony proves to be untruthful or incomplete in any way, regardless of whether the untruthfulness helps or hurts the United States' case, defendant will have breached this Plea Agreement. In the event defendant breaches the Plea Agreement, the United States will no longer be bound by, and may withdraw from, the Plea Agreement and take defendant to trial on any charges of which the United States is aware. Defendant agrees that if the United States in good faith determines that she has not

provided full and truthful cooperation, or has committed any local, state, or federal crime between the date of this Plea Agreement and her sentencing, or has otherwise violated any other provision of this Plea Agreement, or has violated the terms and conditions of her release while on bond as required by the Court, the United States will be relieved of its obligations under this Plea Agreement, the defendant's previously entered plea of guilty shall remain in effect and cannot be withdrawn, and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and any substantive offenses arising from this investigation. Such prosecution may be based upon any information provided by the defendant during the course of her cooperation, or upon leads derived therefrom, and this information may be used as evidence against her. Further, any prosecution which is not barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against the defendant in accordance with this Plea Agreement, notwithstanding the expiration of the statute of limitations between the time of signing this agreement and the commencement of the prosecution. It is the specific intent of this Plea Agreement to waive any and all defenses based upon the statute of limitations with respect to any prosecution which is not barred by the statute of limitations on the date this Plea Agreement is signed by the defendant.

10. Substantial Assistance. The United States agrees to advise the Court in writing before imposition of judgment and sentence of the nature and extent of defendant's cooperation. The United States represents to the defendant that it will consider filing a motion for a downward departure pursuant to § 5K1.1 of the Sentencing Guidelines if, in its sole judgment, the defendant has provided substantial assistance in the investigation and prosecution of other persons who

have committed criminal offenses. Defendant expressly acknowledges, however, that there has been no assurance that such a motion will be filed. The United States reserves the right to make the sole determination as to whether and when the defendant has provided substantial assistance. Defendant further understands and agrees that the decision of whether to depart from the sentencing guideline range pursuant to § 5K1.1, and to what extent, is a matter committed solely to the discretion of the Court. If the Court determines not to depart downward, the defendant shall not be permitted to withdraw her guilty plea solely for that reason. Defendant understands and agrees that if defendant commits a local, state or federal crime (whether a felony or misdemeanor) or violates any conditions of defendant's bond while she is cooperating with the United States, a motion for downward departure will not be filed by the Government on defendant's behalf.

11. Cooperation Stipulations. In exchange for the defendant's agreement to cooperate with the United States, the United States agrees not to use new information that the defendant might provide about defendant's own criminal conduct except as specifically authorized by § 1B1.8 of the United States Sentencing Guidelines. As such, this information may be revealed to the Court but may not be used against the defendant in determining the defendant's applicable Guidelines range or departing above the Guidelines range. Defendant understands and agrees, however, that under U.S.S.G. § 1B1.8, there shall be no such restrictions on the use of such information: (1) if it was previously known to the United States; (2) if it was revealed to the United States by, or discoverable through, an independent source; (3) in a prosecution of defendant for perjury or giving a false statement; (4) in the event there is a breach

of this agreement; or (5) in determining whether and to what extent a downward departure is warranted as a result of a Government motion pursuant to U.S.S.G. § 5K1.1.

12. Withdrawal of Plea. Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw her plea of guilty only if the Court rejects the plea agreement or if the defendant can show a fair and just reason for requesting the withdrawal. The defendant understands that if the Court accepts her plea of guilty and this plea agreement but subsequently imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, she will not be permitted to withdraw her plea of guilty.

13. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines Manual is the one that took effect on November 1, 2010;

c. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2B1.1, which provides for a base offense level of 6;

d. The parties agree to leave open the amount of loss that the defendant is subject to under U.S.S.G. § 2B1.1;

- e. The parties agree that a 2 point enhancement because the offense involved sophisticated means (U.S.S.G. § 2B1.1(b)(9));
- f. The defendant does not qualify for any reductions other than acceptance of responsibility;
- g. The defendant has admitted her guilt and clearly accepted responsibility for her actions, and has assisted authorities in the investigation or prosecution of her own misconduct by timely notifying authorities of her intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, she is entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect, unless the defendant (1) fails to abide by all of the terms and conditions of this plea agreement and her pretrial release; or (2) attempts to withdraw her guilty plea, violates the law, or otherwise engages in conduct inconsistent with her acceptance of responsibility;
- h. There is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine her applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;
- i. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in Paragraph 12 of this plea agreement, provide the defendant with a basis to withdraw her plea of guilty;
- j. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the Information. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and
- k. The defendant understands and agrees that the factual admissions contained in Paragraph 3 of this plea agreement, and any admissions that she will

make during her plea colloquy, support the imposition of the agreed-upon Guidelines calculations contained in this agreement.

1. The United States agrees not to seek an upward departure from the Guidelines or a variance above the Guidelines range. Other than a reduction based on substantial assistance, the defendant agrees that she will not seek a downward departure from the Guidelines, or a variance below the Guidelines range. The agreement not to seek a departure from the Guidelines or non-Guidelines sentence is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable."

m. The parties expressly acknowledge that other enhancements or reductions in the defendant's offense level may be applicable and reserve the right to argue for such enhancements or reductions, as set forth in paragraph 14.

14. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 13, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

15. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

16. Financial Obligations. By entering into this plea agreement, the defendant represents that she understands and agrees to the following financial obligations:

a. The Court must order restitution to the victims of the offense to which the defendant is pleading guilty. The defendant agrees that the Court may order

restitution in connection with the conduct charged in any counts of the Information which are to be dismissed and all other uncharged related criminal activity.

b. The United States may use the Federal Debt Collection Procedures Act and any other remedies provided by law to enforce any restitution order that may be entered as part of the sentence in this case and to collect any fine.

c. The defendant will fully and truthfully disclose all assets and property in which she has any interest, or over which the defendant exercises control directly or indirectly, including assets and property held by a spouse, nominee or other third party. The defendant's disclosure obligations are ongoing, and are in force from the execution of this agreement until the defendant has satisfied the restitution order in full.

d. Within 10 days of the execution of this plea agreement, at the request of the United States Attorney's Office (USAO), the defendant agrees to execute and submit (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of all financial information that the defendant submits to the U.S. Probation Office. The defendant understands that compliance with these requests will be taken into account when the United States makes a recommendation to the Court regarding the defendant's acceptance of responsibility.

e. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of substitute assets and restitution.

f. The defendant hereby authorizes the USAO to obtain a credit report pertaining to her to assist the USAO in evaluating the defendant's ability to satisfy any financial obligations imposed as part of the sentence.

g. The defendant understands that a Special Assessment will be imposed as part of the sentence in this case. The defendant promises to pay the Special Assessment of \$100 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of her fulfillment of this obligation at the time of sentencing.

h. The defendant certifies that she has made no transfer of assets or property for the purpose of (1) evading financial obligations created by this Agreement; (2) evading obligations that may be imposed by the Court; nor (3) hindering efforts of the USAO to enforce such financial obligations. Moreover, the defendant promises that she will make no such transfers in the future.

i. In the event the United States learns of any misrepresentation in the financial disclosure statement, or of any asset in which the defendant had an interest at the time of this plea agreement that is not disclosed in the financial disclosure statement, and in the event such misrepresentation or nondisclosure changes the estimated net worth of the defendant by ten thousand dollars (\$10,000) or more, the United States may at its option: (1) choose to be relieved of its obligations under this plea agreement; or (2) let the plea agreement stand, collect the full forfeiture, restitution, and fines imposed by any criminal or civil judgment, and also collect 100% (one hundred percent) of the value of any previously undisclosed assets. The defendant agrees not to contest any collection of such assets. In the event the United States opts to be relieved of its obligations under this plea agreement, the defendant's previously entered pleas of guilty shall remain in effect and cannot be withdrawn.

17. Government's Reservation of Rights. The defendant understands that the

United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the Information;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

18. Waiver of Constitutional Rights. The defendant, by pleading guilty,

acknowledges that she has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until her guilt has been established beyond a reasonable doubt at trial;

- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against her;
- e. the right to compel or subpoena witnesses to appear on her behalf; and
- f. the right to remain silent at trial, in which case her silence may not be used against her.

The defendant understands that by pleading guilty, she waives or gives up those rights and that there will be no trial. The defendant further understands that if she pleads guilty, the Court may ask her questions about the offense or offenses to which she pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or making a false statement. The defendant also understands she has pleaded guilty to a felony offense and, as a result, will lose her right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury. She further understands that by pleading guilty to an information, she expressly consents to venue in the Western District of Missouri, and she waives her right to subsequently challenge venue and jurisdiction in that court to the charges to which she pleads.

19. Waiver of Appellate and Post-Conviction Rights.

- a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement she waives her right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct.
- b. The defendant expressly waives her right to appeal her sentence, directly or collaterally, on any ground except claims of (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An “illegal

“sentence” includes a sentence imposed in excess of the statutory maximum, but does *not* include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government’s appeal, cross-appeal her sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

20. Waiver of FOIA Request. The defendant waives all of her rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

21. Waiver of Claim for Attorney’s Fees. The defendant waives all of her claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney’s fees and other litigation expenses arising out of the investigation or prosecution of this matter.

22. Immigration Consequences. The defendant understands that she is bound by her guilty plea regardless of any immigration consequences of the plea and regardless of any advice the defendant has received from her counsel or others regarding those consequences. Accordingly, the defendant waives any and all challenges to her guilty plea and to her sentence based on those consequences, and agrees not to seek to withdraw her guilty plea, or to file a direct appeal or any kind of collateral attack challenging her guilty plea, conviction, or sentence, based on the immigration consequences of her guilty plea, conviction, and sentence.

23. Defendant’s Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if

the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw her plea of guilty.

The defendant also understands and agrees that in the event she violates this plea agreement, all statements made by her to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by her before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against her in any and all criminal proceedings. The defendant waives any rights that she might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by her subsequent to this plea agreement.

24. Defendant's Representations. The defendant acknowledges that she has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that she is satisfied with the assistance of counsel, and that counsel has fully advised her of her rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, her attorneys or any other party to induce her to enter her plea of guilty.

25. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions, together with any written supplemental agreement that might be presented to the Court in camera, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

26. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Beth Phillips
United States Attorney

Dated: 09/20/2011

/s/ Daniel M. Nelson
Daniel M. Nelson
Assistant United States Attorney

Dated: 09/20/2011

/s/ Thomas M. Larson
Thomas M. Larson
Assistant United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the Information. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated: 09/20/2011

/s/ Marian Fine-Kennedy
Marian Fine-Kennedy
Defendant

I am defendant Marian Fine-Kennedy's attorney. I have fully explained to her her rights with respect to the offenses charged in the Information. Further, I have reviewed with her the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with her. To my knowledge, Marian Fine-Kennedy's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 09/20/2011

/s/ Gina L. Simone
Gina L. Simone, Esq.
Attorney for Defendant