

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:15-CR- 190 -T-36 AEP

THERESA A. ALEY

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, and the defendant, Theresa A. Aley, and the attorney for the defendant, David Joffe, Esq., mutually agree as follows:

A. Particularized Terms

1. Count(s) Pleading To

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the defendant with False Statement Regarding Federal Workers' Compensation Benefits, in violation of 18 U.S.C. § 1920.

2. Maximum Penalties

Count One carries a maximum sentence of five years' imprisonment, a fine of not more than \$250,000 or twice the gross gain caused by the offense, or twice the gross loss caused by the offense, whichever is greater, a term of supervised release of not more than three years, and a special assessment of \$100.00. With respect to certain offenses, the Court shall order

Defendant's Initials TA

the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

First: the defendant knowingly and willfully made a false statement or report to the Department of Labor, Office of Workers' Compensation Programs;

Second: the false statement or report was made in connection with an application for or receipt of Federal Workers' Compensation benefits; and

Third: the false statement or report related to a material fact.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. §§ 3663A(a) and (b), defendant agrees to make restitution to the United States, which includes the United States Air Force and the United States Department of Labor Office of Workers' Compensation Programs. Specifically, defendant agrees to pay the United States Air Force and the United States Department of Labor Office of Workers' Compensation Programs, a sum of \$83,465.00, representing the amount of worker's compensation benefits that defendant received between February 10, 2013 and April 5, 2014.

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted,

the United States will not oppose the defendant's request to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG § 3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG § 3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to

make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100.00 payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or 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 to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that her financial statement and disclosures will be complete, accurate and truthful and will include all assets in which she has any interest or over which the defendant

exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by

the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by

18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice

received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty.

The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

FACTS

The Federal Employees Compensation Act (FECA) is administered by the U.S. Department of Labor, Office of Workers' Compensation Programs (DOL/OWCP). FECA provides compensation benefits to civilian employees of the United States for disabilities due to personal injuries sustained while in the performance of their official duties at the workplace. FECA benefits include wage replacement income and, if necessary and appropriate, rehabilitation, medical, surgical, and other necessary services.

The DOL/OWCP requires disabled federal employees to complete and submit a form EN-1032 on an annual basis. The DOL/OWCP uses the information provided by the employee on Form EN-1032 to determine whether the employee is still eligible to receive wage replacement income or if an adjustment in benefits is warranted. Form EN-1032 requires the employee to list the names and addresses of employers, dates of employment, rates of pay, and types of work activity(ies). Form EN-1032 also requires the employee to list periods of self-employment for the 15-month period immediately preceding completion of the form. Information indicating employment or self-employment can result in a reduction or termination of wage replacement income. Form EN-1032 requires the employee to sign the form and certify that all of the information contained in the form is true and correct. Specifically, this certification language provides, in pertinent part:

I know that anyone who fraudulently conceals or fails to report income or other information which would have an effect on benefits,

or who makes a false statement or misrepresentation of a material fact in claiming a payment or benefit under the Federal Employees' Compensation Act may be subject to criminal prosecution, from which a fine or imprisonment, or both, may result.

I understand that I must immediately report to OWCP any improvement in my medical condition, any employment,

I certify that all the statements made in response to questions on this form are true, complete and correct to the best of my knowledge and belief. I have placed "Not Applicable" (N/A) or "None" next to those questions that do not apply to me or my claim.

In April 1998, the defendant was employed as a Customer Survey Program Manager at Bolling Air Force Base, Maryland, when the defendant reported falling in the ladies' restroom and injuring her lower spine. The defendant was diagnosed with acute lumbar strain and right leg sciatica, was placed on permanent restriction, and in July 1999 was listed as completely disabled. Following that alleged injury, the defendant made application for and was approved to receive federal employee's compensation benefits. The defendant began receiving federal employee's compensation benefits under FECA on August 27, 1998 and has continued to receive them through the present date. The defendant currently receives \$5,648.00 every 28 days from the DOL/OWCP.

Each year, the defendant submitted a Form EN-1032 to the DOL, indicating that she was not self-employed, she was not involved in any business enterprise, and she did not perform any volunteer work. On April 9, 2014, the defendant completed, signed and submitted, or caused to be submitted, a Form EN-1032 in connection with her receipt of federal employee's compensation.

With respect to said form, the EN-1032 stated that the defendant was not self-employed, involved in any business enterprise, or performed any volunteer work for the last 15 months. In completing and submitting this form, the defendant knowingly and willfully failed to disclose improvements in her condition and her involvement in a business enterprise by omitting material facts concerning her activities in order to continue to receive and retain federal employee's compensation.

Specifically, videotaped surveillance, interviews, and business records amassed during the investigation revealed that during the time period of July 2006 through April 2015, the defendant was involved in and worked for Aley Enterprises, a magazine distribution business in Cape Coral, Florida, with her husband. Among other facts, the defendant presented herself as the owner of Aley Enterprises, was listed on the business checking account (and endorsed most of the checks deposited into that account), and handled the majority of business operations, including routinely interacting with customers and managing customer accounts. Records show that money was transferred from the business checking account to the defendant's personal savings account. The defendant routinely engaged in email communication on behalf of the business, which she signed. In addition, on multiple occasions in 2013 and 2014, the defendant was observed at the business climbing into the bed of a pickup truck; removing plastic wrapping from pallets of boxes; lifting, carrying, and loading

boxes into the back of vehicles; moving pallets around the warehouse; and delivering magazines to several businesses in the Cape Coral area.

Part A of the EN-1032 relates to "EMPLOYMENT." Among other things, the form specifically instructs that the recipient is to, "**Report ALL employment for which you received a salary, wages, income . . . or payment of any kind.**" (Bold in original document.) Further, Part A instructs the recipient to, "**Report ALL self-employment or involvement in business enterprises.**" (Bold in original document). The form explains that business enterprises include, "operating a business." The explanation further instructs, "Report activities such as keeping books and records, or managing and/or overseeing a business of any kind, including a family business. Even if your activities were part-time or intermittent, you must report them." Following that language, the EN-1032 specifically warned the defendant that she could be charged criminally for false statements. The form stated: "**SEVERE PENALTIES MAY BE APPLIED FOR FAILURE TO REPORT ALL WORK ACTIVITIES THOROUGHLY AND COMPLETELY.**" (Bold in original document). In addition, the letter that accompanies the EN-1032 form specifically advises that, "A FALSE OR EVASIVE ANSWER TO ANY QUESTION . . . MAY BE GROUNDS FOR FORFEITING YOUR COMPENSATION BENEFITS . . . A FRAUDULENT ANSWER MAY ALSO RESULT IN CRIMINAL PROSECUTION."

Despite those warnings, the defendant falsely reported and certified on Form EN-1032 on April 9, 2014, that she was not employed, self-employed, or

involved in any business enterprise in the past 15 months. Nor did the defendant report any income of any kind. Further, the defendant concealed the true state of her physical health. These statements were false and fraudulent, and the defendant made them because she did not want her DOL/OWCP wage replacement benefits to be reduced or terminated.

Between February 10, 2013 and April 5, 2014, the defendant received \$83,465.00 in federal employee's compensation to which she was not entitled.

12. Entire Agreement

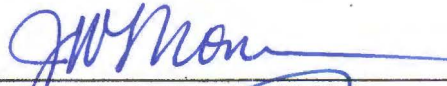
This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

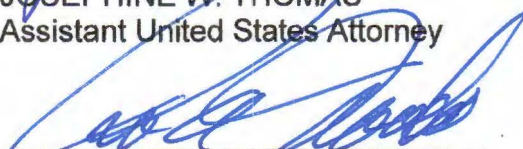
DATED this 26th day of May, 2015.

A. LEE BENTLEY, III
United States Attorney



JOSEPHINE W. THOMAS
Assistant United States Attorney

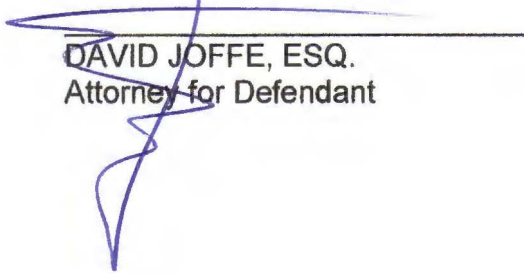
Assistant United States Attorney



ROBERT A. MOSAKOWSKI
Assistant United States Attorney
Chief, Economic Crimes Section



THERESA A. ALEY
Defendant



DAVID JOFFE, ESQ.
Attorney for Defendant