

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:11-Cr-124-T-27TBM

IRIS D. LOCKLEAR

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, IRIS D. LOCKLEAR, and the attorney for the defendant, Adam Allen, Assistant Federal Public Defender, mutually agree as follows:

A. **Particularized Terms**

1. **Count(s) Pleading To**

The defendant shall enter a plea of guilty to Counts One and Ten of the Superseding Indictment. Counts One and Ten charge the defendant with mail fraud, in violation of 18 U.S.C. § 1341.

Defendant's Initials



AF Approval



2. Maximum Penalties

Counts One and Ten carry a maximum sentence of twenty (20) years imprisonment, a fine of \$250,000, or twice the gross gain caused by the offense, or twice the gross loss caused by offense, whichever is greater, a term of supervised release of not more than five (5) years, and a special assessment of \$50 per felony count for offenses committed prior to April 24, 1996, \$100 per felony count thereafter; for organizations the amounts are "\$200" and "\$400" respectively, said special assessment to be due on the date of sentencing. With respect to certain offenses, the Court shall order 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 Counts One and Ten are:

First: the defendant knowingly devised or participated in a scheme to defraud someone, or obtain money or property, using false or fraudulent pretenses, representations, or promises;

Second: the false or fraudulent pretenses, representations, or promises were about a material fact;

Third: the defendant intended to defraud someone; and

Defendant's Initials me

Fourth: the defendant used the United States Postal Service by mailing, or by causing to be mailed, something meant to help carry out the scheme to defraud.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts Two through Nine and Eleven through Twenty-Four, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

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 full restitution to the U.S. Treasury, Juanita Haitas, Joseph Sandoval, and Victor Guzman.

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

Defendant's Initials



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 recommend 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), 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

Defendant's Initials



cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, a forfeiture money judgment in the amount of \$8,373.29, representing the proceeds of the offenses charged in Counts One and Ten. The defendant also hereby agrees to waive all constitutional, statutory and procedural 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 described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1)(A), the United States and the defendant request that at the

Defendant's Initials



time of accepting this plea agreement, the Court make a determination that the government has established the amount of the proceeds of the offense(s) to which defendant is pleading guilty is \$8,373.29 and enter an order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees that the United States shall, at its option, be entitled to the forfeiture of any property (substitute assets) of the defendant up to the value of the money judgment. The Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take all steps necessary to identify and locate all substitute assets and to transfer custody of such assets to the United States before the defendant's sentencing. To that end, the defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control directly or indirectly, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent

Defendant's Initials

WW

to the release of the defendant's tax returns for the previous five years. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and U.S.S.G. § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of his cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to any substitute assets before the defendant's sentencing. In addition to providing full and complete information about substitute assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that

Defendant's Initials

eb

determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed money judgment amount, is collected in full. To the extent that forfeiture pursuant to this agreement requires the defendant to disgorge wrongfully obtained criminal proceeds for the benefit of defendant's victims, the defendant agrees that the forfeiture is primarily remedial in nature.

**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) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987), 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. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

Defendant's Initials 



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. 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.

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, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the

Defendant's Initials   *el*

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.

4. 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,

Defendant's Initials

JD

whether or not such decision is consistent with the government's recommendations contained herein.

5. 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).

Defendant's Initials ②

6. 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.

7. 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.

8. 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

Defendant's Initials   @

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.

9. 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:

Defendant's Initials

(u)

FACTS

In August 2007, Defendant IRIS DAVILA LOCKLEAR resided at 14032 Lemon Valley Place in Tampa. In August 2007 Edward S. Howard was a person who was incarcerated in the Florida Department of Corrections as a result of his conviction for First Degree Murder.

In August 2007 Defendant LOCKLEAR caused a fraudulently-acquired U.S. Treasury check in the amount of \$8,131.96 drawn payable to Edward S. Howard to be mailed to her address on Lemon Valley Place. That check had been issued by the U.S. Treasury based on a fraudulent Form 1040 tax return for taxpayer Edward S. Howard, covering tax year 2004. Mr. Howard had been incarcerated as a result of his criminal conduct since 2001 and he was not employed in 2004 as claimed on the fraudulent return that was filed.

On or about August 27, 2007, Defendant LOCKLEAR opened a Bank of America joint checking account, number xxx-4636, in the name of the incarcerated individual, Edward Howard, and in her own name, Iris Davila (her former married name). Defendant LOCKLEAR provided the bank with her home address on Lemon Valley Place as the address to which the monthly account statements were to be directed.

Defendant's Initials

W

On or about August 31, 2007, Defendant LOCKLEAR caused the name Edward Howard to be endorsed on the reverse side of the U.S. Treasury check, and she deposited the fraudulently-acquired Edward Howard tax refund check in the amount of \$8,131.96, in the account she had opened.

The only other deposit Defendant LOCKLEAR made in this bank account was another fraudulently-acquired Edward Howard federal tax refund check; i.e., that check charged in Count Two of the Superseding Indictment, which covered tax year 2005. (Mr. Howard was also incarcerated in 2005.)

Bank of America sent monthly account statements to Defendant LOCKLEAR's home address each and every month through approximately August 2011. There were further attempts, which were unsuccessful, to fraudulently acquire federal tax refunds based on Edward Howard returns that were filed. Defendant LOCKLEAR gradually withdrew and spent the funds attributable to these two fraudulent checks.

With respect to Count Ten of the Superseding Indictment, toward the end of 2006 Defendant LOCKLEAR met and befriended an elderly lady by the name of Juanita Haitas. ~~Under the guise of providing financial assistance to Ms. Haitas (federal tax assistance),~~ Defendant LOCKLEAR acquired personal financial information from Ms. Haitas, including information relating to insurance products that Ms. Haitas and her son, Joseph Sandoval, owned. (u)

Defendant's Initials (u)

In January 2007 Defendant LOCKLEAR used the personal information she had acquired from Ms. Haitas, and LOCKLEAR sent a letter to the Lincoln Financial Group, requesting a change of address for the insured client, Juanita Haitas. Defendant LOCKLEAR requested that the address be changed from Ms. Haitas' address in Maryland to Defendant LOCKLEAR's home address at 14032 Lemon Valley Place in Tampa. On or about February 20, 2007, Defendant LOCKLEAR fraudulently opened a Bank of America checking account, xxx-3615, in the names of Juanita Haitas and Joseph Sandoval. The bank was directed to send the account statements to 14032 Lemon Valley Place, Tampa, Defendant LOCKLEAR's address. Thereafter, on a monthly basis, Lincoln Financial Group mailed a series of checks in payment of Juanita Haitas' policy number xxx-9919, to the defendant's house at 14032 Lemon Valley Place in Tampa. Each of those checks were drawn payable to Juanita Haitas. Defendant LOCKLEAR fraudulently endorsed Ms. Haitas' name and negotiated each of those checks through that account, without Ms. Haitas' permission. This conduct continued through March 3, 2008, when Defendant LOCKLEAR caused the check described in Count Ten of the Superseding Indictment (in the amount of \$241.33) to be mailed to LOCKLEAR's own address. That check was subsequently negotiated and the funds attributable to it were converted to Defendant LOCKLEAR's use and benefit.

Defendant's Initials

W



10. 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.

11. 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 6 day of DECEMBER, 2012.



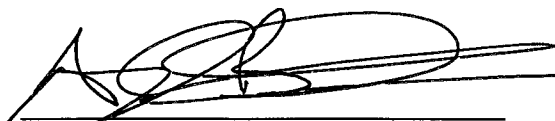
IRIS D. LOCKLEAR  
Defendant

By:

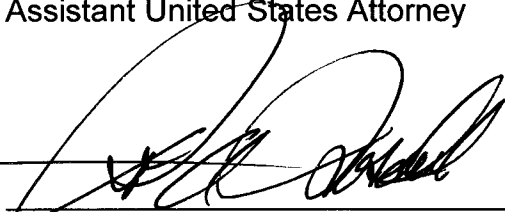
ROBERT E. O'NEILL  
United States Attorney



ROBERT T. MONK  
Assistant United States Attorney



ADAM ALLEN, ESQUIRE  
Assistant Federal Public Defender  
Attorney for Defendant



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