

FILED

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BARBARA ANTONUCCI,

Defendant.

CASE NO. 14-cr-0099-GEB

PLEA AGREEMENT

DATE: AUGUST 19, 2016
TIME: 9:30A.M.
COURT: Hon. Garland E. Burrell, Jr.

I. INTRODUCTION

A. Scope of Agreement.

The Indictment, 14-CR-0099-GEB, in this case charges the defendant, Barbara Antonucci ("Defendant") with violations of 18 U.S.C. § 286 – Conspiracy to Submit False Claims ("Count One"); 18 U.S.C. § 287 – False, Fictitious, and Fraudulent Claims ("Count Two through Count Twenty-Two"); and 18 U.S.C. § 1028A – Aggravated Identity Theft ("Count Twenty-Seven"). This document contains the complete plea agreement between the United States Attorney's Office for the Eastern District of California (the "government") and Defendant regarding this case. This Plea Agreement is limited to the United States Attorney's Office for the Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

B. Court Not a Party.

The Court is not a party to this Plea Agreement. Sentencing is a matter solely within the discretion of the Court, and the Court may take into consideration any and all facts and circumstances concerning the criminal activities of Defendant, including activities which may not have been charged in

1 the Indictment. The Court is under no obligation to accept any recommendations made by the
 2 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
 3 including the statutory maximum stated in this Plea Agreement.

4 If the Court should impose any sentence up to the maximum established by the statute,
 5 Defendant cannot, for that reason alone, withdraw her guilty plea, and she will remain bound to fulfill all
 6 of the obligations under this Plea Agreement. Defendant understands that neither the prosecutor,
 7 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence she will
 8 receive.

9 II. DEFENDANT'S OBLIGATIONS

10 A. Guilty Plea.

11 Defendant will plead guilty to violations of: 18 U.S.C. § 286 – Conspiracy to Submit False
 12 Claims (“Count One”), and 18 U.S.C. § 287 – False, Fictitious, and Fraudulent Claims (“Count
 13 Thirteen”). Defendant agrees that she is in fact guilty of these charges and that the facts set forth in the
 14 Factual Basis for Plea attached hereto as Exhibit A are accurate.

15 Defendant agrees that this Plea Agreement will be filed with the Court and become a part of the
 16 record of the case. Defendant understands and agrees that she will not be allowed to withdraw her plea
 17 should the Court not follow the government’s sentencing recommendations.

18 Defendant agrees that the statements made by her in signing this Agreement, including the
 19 factual admissions set forth in the factual basis, shall be admissible and useable against Defendant by the
 20 United States in any subsequent criminal or civil proceedings, even if Defendant fails to enter a guilty
 21 plea pursuant to this Agreement. Defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R.
 22 Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this Agreement
 23 generally.

24 1. Package Agreement:

25 Defendant acknowledges and understands that the plea offer made to her here by the government
 26 is a “package offer.” That is, Defendant understands that the offer made to her is conditioned on co-
 27 defendant Sherry Taggart pleading guilty according to the terms of her respective plea offer. Defendant
 28 understands that if this co-defendant declines, refuses or fails to plead guilty according to her respective

offer, then, at the option of the government, Defendant will not be allowed to enter a plea of guilty to the offer made to him by the government. Additionally, if co-defendant Sherry Taggart fails or refuses to enter her plea according to her respective offer and Defendant has already entered her plea, then this Plea Agreement is voidable at the option of the government. In its sole discretion, the government has the ability to withdraw from the Plea Agreement with Defendant and pursue the original charges as to Defendant. However, in such a circumstance Defendant's waiver of her rights under Rule 11(f) and Fed. R. Evid. 410, as set forth in Section II.A herein, will not operate. In all other circumstances Defendant's waiver of her rights under Rule 11(f) and Fed. R. Evid. 410, as set forth in Section II.A herein, will operate.

Recognizing that this is a package offer, Defendant confirms that she has not been threatened, pressured, or coerced by any other person, including the co-defendant, to enter into this Plea Agreement. Defendant also confirms that she enters into this Plea Agreement voluntarily because she is in fact guilty of the offenses to which she is pleading guilty.

B. Restitution.

In exchange for the dismissal of Counts Two through Twelve, Counts Fourteen through Twenty-Two, and Count Twenty-Seven of the Indictment, as well as other consideration set forth in this Agreement, Defendant agrees to pay full restitution for all charged counts, including any dismissed counts, to the Internal Revenue Service ("IRS") in an amount totaling \$1,895,833. Defendant agrees that the total amount of restitution reflected in this Agreement results from Defendant's fraudulent conduct. Any restitution paid to the IRS shall be credited by the IRS against any amount which Defendant owes the IRS, in accordance with standard IRS procedure.

Defendant understands that this agreement does not relive Defendant from any legal obligation to pay additional amounts due and owing to the IRS. Defendant understands that nothing in this Agreement restricts the United States or the IRS from initiating any collection or civil enforcement action relating thereto, nor does this Agreement bar Defendant from civilly contesting any liabilities determined by the IRS, or bar Defendant from exercising her rights in collection proceedings as provided by the Internal Revenue code and standard IRS procedure. Defendant understands that the factual basis of her Plea Agreement binds only the United States Attorney's Office for the Eastern

1 District of California in this criminal case, and does not bind any agency of the United States in any
2 other judicial, administrative, or other proceeding.

3 Defendant agrees to pay restitution to the United States for the dismissed counts (including
4 restitution to be paid on Counts One and Thirteen) pursuant to 18 United States Code, § 3663(a)(3), in
5 an amount totaling \$1,895,833.

6 Defendant further agrees to that she will not seek to discharge any restitution obligation or any
7 part of such obligation in any bankruptcy proceeding.

8 Payment of restitution shall be by cashier's or certified check made payable to the Clerk of the
9 Court. The Clerk of the Court shall remit restitution payments to the following address until further
10 notice: IRS RACS, Attn: Mail Stop 6261, Restitution 333 W. Pershing Ave., Kansas City, MO 64108.

11 **C. Fine.**

12 Defendant agrees to pay a criminal fine as imposed by the Court. Defendant understands that
13 this Plea Agreement is voidable at the option of the government if she fails to pay the stipulated fine as
14 required by this Plea Agreement.

15 **D. Special Assessment.**

16 Defendant agrees to pay a special assessment of \$200 (\$100 per count of conviction) at the time
17 of sentencing by delivering a check or money order payable to the United States District Court to the
18 United States Probation Office immediately before the sentencing hearing. Defendant understands that
19 this Plea Agreement is voidable at the option of the government if she fails to pay the assessment prior
20 to that hearing. If Defendant is unable to pay the special assessment at the time of sentencing, she
21 agrees to earn the money to pay the assessment, if necessary by participating in the Inmate Financial
22 Responsibility Program.

23 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea.**

24 If Defendant violates this Plea Agreement in any way, withdraws her plea, or tries to withdraw
25 her plea, this Plea Agreement is voidable at the option of the government. The government will no
26 longer be bound by its representations to Defendant concerning the limits on criminal prosecution and
27 sentencing as set forth herein. One way a defendant violates this Plea Agreement is to commit any
28 crime or provide any statement or testimony which proves to be knowingly false, misleading, or

1 materially incomplete. Any post-plea conduct by Defendant constituting obstruction of justice will also
2 be a violation of the Agreement. The determination whether Defendant has violated the Plea Agreement
3 will be under a probable cause standard.

4 If Defendant violates the Plea Agreement, withdraws her plea, or tries to withdraw her plea, the
5 government shall have the right (1) to prosecute Defendant on any of the counts to which she pleaded
6 guilty; (2) to reinstate any counts that may be dismissed pursuant to this Plea Agreement; and (3) to file
7 any new charges that would otherwise be barred by this Plea Agreement. Defendant shall thereafter be
8 subject to prosecution for any federal criminal violation of which the government has knowledge,
9 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
10 options is solely in the discretion of the United States Attorney's Office.

11 By signing this Plea Agreement, Defendant agrees to waive any objections, motions, and
12 defenses that Defendant might have to the government's decision. Any prosecutions that are not time-
13 barred by the applicable statute of limitations as of the date of this Plea Agreement may be commenced
14 in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between
15 the signing of this Plea Agreement and the commencement of any such prosecutions. Defendant agrees
16 not to raise any objections based on the passage of time with respect to such counts including, but not
17 limited to, any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial
18 Clause of the Sixth Amendment to any counts that were not time-barred as of the date of this Plea
19 Agreement.

20 In addition, (1) all statements made by Defendant to the government or other designated law
21 enforcement agents, or any testimony given by Defendant before a grand jury or other tribunal, whether
22 before or after this Plea Agreement, shall be admissible in evidence in any criminal, civil, or
23 administrative proceedings hereafter brought against Defendant; and (2) Defendant shall assert no claim
24 under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure,
25 Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by Defendant
26 before or after this Plea Agreement, or any leads derived therefrom, should be suppressed. By signing
27 this Plea Agreement, Defendant waives any and all rights in the foregoing respects.
28

1 **F. Asset Disclosure.**

2 Defendant agrees to make a full and complete disclosure of her assets and financial condition,
3 and will complete the United States Attorney's Office's "Authorization to Release Information" and
4 "Financial Affidavit" within five (5) weeks from the entry of Defendant's change of plea. Defendant
5 also agrees to have the Court enter an order to that effect. Defendant understands that this Plea
6 Agreement is voidable at the option of the government if Defendant fails to complete truthfully and
7 provide the described documentation to the United States Attorney's office within the allotted time.

8 **III. THE GOVERNMENT'S OBLIGATIONS**

9 **A. Dismissals.**

10 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
11 remaining counts in the pending Indictment. The government also agrees not to reinstate any dismissed
12 count except if this Agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
13 of Plea Agreement by Defendant/Withdrawal of Pleas), VI.B (Guidelines Calculations), and VII.B
14 (Waiver of Appeal and Collateral Attack) herein.

15 **B. Recommendations.**

16 1. Incarceration Range.

17 The government will ^{BA} recommend that Defendant be sentenced within the applicable guideline
18 range for Count One and Count ^{Thirteen} ~~Two~~ ^{(AME) D}, as stipulated by the parties in this Agreement. Specifically, the
19 government will recommend a sentence of at least 42 months in custody.

20 2. Acceptance of Responsibility.

21 The government will recommend a two-level reduction (if the offense level is less than 16) or a
22 three-level reduction (if the offense level reaches 16) in the computation of her offense level if
23 Defendant clearly demonstrates acceptance of responsibility for her conduct as defined in U.S.S.G. §
24 3E1.1. This includes Defendant meeting with and assisting the probation officer in the preparation of
25 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
26 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
27 preparation of the pre-sentence report or during the sentencing proceeding.

C. Use of Information for Sentencing.

The government is free to provide full and accurate information to the Court and Probation, including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate statements or arguments by Defendant, her attorney, Probation, or the Court. Defendant also understands and agrees that nothing in this Plea Agreement bars the government from defending on appeal or collateral review any sentence that the Court may impose.

Further, other than as set forth above, the government agrees that any incriminating information provided by Defendant during her cooperation will not be used in determining the applicable guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to representations made to the Court by Defendant, or on her behalf, that contradict information provided by Defendant during her cooperation.

IV. ELEMENTS OF THE OFFENSE

At a trial, the government would have to prove beyond a reasonable doubt the following elements of the offenses to which Defendant is pleading guilty:

1. Count One: 18 U.S.C. § 286 – Conspiracy to Submit False Claims

- A. Defendant Barbara Antonucci entered into a conspiracy to obtain payment or allowance of a claim against a department or agency of the United States;
- B. The claim was false, fictitious, or fraudulent;
- C. Defendant Barbara Antonucci knew or was deliberately ignorant of the claim's falsity, fictitiousness, or fraudulence;
- D. Defendant Barbara Antonucci knew of the conspiracy and intended to join it; and
- E. Defendant Barbara Antonucci voluntarily participated in the conspiracy.

2. Count Thirteen: 18 U.S.C. § 287 – False, Fictitious, and Fraudulent Claims

- A. On or about, February 13, 2011, Defendant Barbara Antonucci knowingly made or presented a claim to the United States Department of Treasury
- B. The claim which was made or presented was a claim against the United States or a department or agency of the United States; and
- C. The claim was materially false, fictitious, or fraudulent; and
- D. Defendant Barbara Antonucci knew that the claim was false, fictitious or fraudulent.

Defendant fully understands the nature and elements of the crimes charged in the Indictment to which she is pleading guilty, together with the possible defenses thereto, and has discussed them with her attorney.

V. MAXIMUM SENTENCE

A. Maximum Penalties.

1. 18 U.S.C. § 286 – Conspiracy to Submit False Claims

The maximum sentence that the Court can impose for a violation of 18 U.S.C. § 286 – Conspiracy to Submit False Claims, as alleged in Count One of the Indictment, is 10 years in prison, a fine of \$250,000, a 3-year period of supervised release and a special assessment of \$100. By signing this Plea Agreement, Defendant also agrees that the Court can order the payment of restitution for the full loss caused by Defendant's wrongful conduct. Defendant agrees that the restitution order is not restricted to the amounts alleged in the specific count to which she is pleading guilty. Defendant further agrees, as noted above, that she will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the Court.

2. 18 U.S.C. § 287 – False, Fictitious, and Fraudulent Claims

The maximum sentence that the Court can impose for a violation of 18 U.S.C. § 287 – False, Fictitious, and Fraudulent Claims, as alleged in Count Thirteen of the Indictment, is 5 years in prison, a fine of \$250,000, a 3-year period of supervised release and a special assessment of \$100. By signing this Plea Agreement, Defendant also agrees that the Court can order the payment of restitution for the full loss caused by Defendant's wrongful conduct. Defendant agrees that the restitution order is not restricted to the amounts alleged in the specific count to which she is pleading guilty. Defendant further agrees, as noted above, that she will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the Court.

B. Violations of Supervised Release.

Defendant understands that if she violates a condition of supervised release at any time during the term of supervised release, the Court may revoke the term of supervised release and require Defendant to serve up to two additional years' imprisonment on both Count One and Count Thirteen.

1 **VI. SENTENCING DETERMINATION**

2 **A. Statutory Authority.**

3 Defendant understands that the Court must consult the Federal Sentencing Guidelines and must
 4 take them into account when determining a final sentence. Defendant understands that the Court will
 5 determine a non-binding and advisory guideline sentencing range for this case pursuant to the
 6 Sentencing Guidelines and must take them into account when determining a final sentence. Defendant
 7 further understands that the Court will consider whether there is a basis for departure from the Guideline
 8 sentencing range (either above or below the Guideline sentencing range) because there exists an
 9 aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration
 10 by the Sentencing Commission in formulating the Guidelines. Defendant further understands that the
 11 Court, after consultation and consideration of the Sentencing Guidelines, must impose a sentence that is
 12 reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

13 **B. Stipulations Affecting Guideline Calculation.**

14 The government and Defendant agree that there is no material dispute as to the following
 15 sentencing guidelines variables and therefore stipulate to the following:

16 **1. Count One: 18 U.S.C. § 286 – Conspiracy to Submit False Claims**

17 **A. Base Offense Level:** The base offense level for false claims convictions is generally 6, as
 18 set forth in U.S.S.G. § 2B1.1(a)(2). However, because in this case Count One involves a conspiracy to
 19 submit false claims for tax refunds, the base offense level calculation begins under U.S.S.G. § 2T1.1, which
 20 references the tax loss table at U.S.S.G. § 2T4.1. See U.S.S.G. § 2T4.1 and Application Note 16 to U.S.S.G.
 21 § 2B1.1 (when a defendant is convicted under a general fraud statute but the conduct underlying the count of
 22 conviction is covered by a more specific guideline, the sentencing court should apply the more specific
 23 guideline). See also *United States v. Aragbaye*, 234 F.3d 1101, 1105-06 (9th Cir. 2000) (holding that §2T1.1
 24 applies to a false claim for a tax refund when Defendant has been convicted under 18 U.S.C. § 286 or § 287).

25 The offenses charged in Count One and Count Thirteen of the Indictment, together with the relevant
 26 conduct as set forth in the Factual Basis (Ex. A), resulted in a loss of over \$1,500,000. As part of this Plea
 27 Agreement, the parties agree that the specific offense characteristic of a loss of more than \$1,500,000, but
 28

less than \$3,500,000 applies. Hence, the base offense level is 22, as set forth in the table at U.S.S.G. § 2T4.1.

B. Specific Offense Characteristics:

- i. Two levels are added (+2) because Defendant failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity. U.S.S.G. § 2T1.1(b)(1).

C. Specific Offense Level: The parties estimate that the specific offense level will be 24.

D. Adjusted Offense Level: Given the stipulations above, the parties estimate that the adjusted offense level will be 21.

2. Count Thirteen: 18 U.S.C. § 287 – False, Fictitious, and Fraudulent Claims

A. Base Offense Level: The base offense level for false claims convictions is generally 6, as set forth in U.S.S.G. § 2B1.1(a)(2). However, because in this case Count Thirteen involves false claims for tax refunds, the base offense level calculation begins under U.S.S.G. § 2T1.1, which references the tax loss table at U.S.S.G. § 2T4.1. See U.S.S.G. § 2T4.1 and Application Note 16 to U.S.S.G. § 2B1.1 (when a defendant is convicted under a general fraud statute but the conduct underlying the count of conviction is covered by a more specific guideline, the sentencing court should apply the more specific guideline). See also United States v. Aragbaye, 234 F.3d 1101, 1105-06 (9th Cir. 2000) (holding that §2T1.1 applies to a false claim for a tax refund when Defendant has been convicted under 18 U.S.C. § 286 or § 287).

The offenses charged in Count One and Count Thirteen of the Indictment, together with the relevant conduct as set forth in the Factual Basis (Ex. A), resulted in a loss of over \$1,500,000. As part of this Plea Agreement, the parties agree that the specific offense characteristic of a loss of more than \$1,500,000, but less than \$3,500,000 applies. Hence, the base offense level is 22, as set forth in the table at U.S.S.G. § 2T4.1.

B. Specific Offense Characteristics:

- i. Two levels are added (+2) because Defendant failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity. U.S.S.G. § 2T1.1(b)(1).

C. Specific Offense Level: The parties estimate that the specific offense level will be 24.

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D. Grouping Multiple Counts:

- i. The Counts in the Indictment to which the defendant is pleading guilty may be grouped together under U.S.S.G. § 3D1.2(d).
- ii. The offense level applicable to the grouped Counts is **24**, which is the offense level applicable under Chapter Two and Parts A, B, and C of Chapter Three of the Sentencing Guidelines, for the most serious of the Counts comprising the group, i.e., the highest offense level of the Counts in the group. See U.S.S.G. § 3D1.3(a).

E. Chapter Three Adjustments: Acceptance of Responsibility: See Part III.B.2 above.

F. Adjusted Offense Level: Given the stipulations above, the parties estimate that the adjusted offense level will be **21**.

G. Criminal History: The parties agree and stipulate that the applicable criminal history will be determined by the Court's probation officers. The parties anticipate, however, that the defendant's criminal history category will be I. Accordingly, the applicable Sentencing Guideline range for Count One and Thirteen will be no less than **37 to 46 months**.

H. Departures or Other Enhancements or Reductions: The parties agree that they will not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"), or cross-references, except that the government may move for a departure or an adjustment based on Defendant's cooperation (§5K1.1) or post-plea obstruction of justice (§3C1.1). Both parties agree not to move for, or argue in support of, any departures or adjustments from the Sentencing Guidelines.

I. 3553(a) Arguments Permitted: Defendant may argue for the Court to consider and apply the sentencing factors under 18 U.S.C. § 3553(a) to arrive at whatever sentence the Court may determine appropriate, so long as that sentence is within the range resulting from the Guideline calculation stipulated by the parties in this Agreement (e.g., no less than 37 months). The government may oppose any such request. Any argument for a sentence of less than the low end of the range resulting from the Guideline calculation stipulated by the parties in this Agreement shall be a breach of this Plea Agreement. In such event, the government, in its sole discretion, may withdraw from the Plea Agreement and continue with its prosecution of Defendant as if the parties had never entered into this Plea Agreement.

VII. WAIVERS

A. Waiver of Constitutional Rights.

Defendant understands that by pleading guilty she is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to testify on her behalf; (e) to confront and cross-examine witnesses against her; and (f) not to be compelled to incriminate herself.

B. Waiver of Appeal and Collateral Attack.

Defendant understands that the law gives Defendant a right to appeal her guilty plea, conviction, and sentence. Defendant agrees as part of her pleas, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not exceed the statutory maximums for the offenses to which she is pleading guilty. Defendant specifically gives up the right to appeal any order of restitution the Court may impose.

Notwithstanding Defendant's waiver of appeal, Defendant will retain the right to appeal if one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum; and/or (2) the government appeals the sentence in the case. Defendant understands that these circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete waiver of all appellate rights.

In addition, regardless of the sentence Defendant receives, Defendant also gives up any right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

Notwithstanding the agreement in paragraph III.A above that the government will move to dismiss counts against Defendant, if Defendant ever attempts to vacate her pleas, dismiss the underlying charges, or modify or set aside her sentence on any of the counts to which she is pleading guilty, the government shall have the rights set forth in Section II.E herein.

C. Waiver of Attorneys' Fees and Costs.

Defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the

1 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
2 (including without limitation any charges to be dismissed pursuant to this Plea Agreement and any
3 charges previously dismissed).

4 **D. Impact of Plea on Defendant's Immigration Status.**

5 Defendant recognizes that pleading guilty may have consequences with respect to her
6 immigration status if she is not a citizen of the United States. Under federal law, a broad range of
7 crimes are removable offenses, including offenses to which Defendant is pleading guilty. Removal and
8 other immigration consequences are the subject of a separate proceeding, however, and defendant
9 understands that no one, including her attorney or the district court, can predict to a certainty the effect
10 of her conviction on her immigration status. Defendant nevertheless affirms that she wants to plead
11 guilty regardless of any immigration consequences that her plea may entail, even if the consequence is
12 her automatic removal from the United States.

13 **VIII. ENTIRE PLEA AGREEMENT**

14 Other than this Plea Agreement, no agreement, understanding, promise, or condition between the
15 government and Defendant exists, nor will such agreement, understanding, promise, or condition exist
16 unless it is committed to writing and signed by Defendant, counsel for Defendant, and counsel for the
17 United States.

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IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this Plea Agreement and have discussed it fully with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this Plea Agreement.

Dated:

8.19.16



JOHN DUREE
Attorney for Defendant

B. Defendant:

I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea Agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated:

8.19.16



BARBARA ANTONUCCI
Defendant

C. Attorney for United States:

I accept and agree to this Plea Agreement on behalf of the government.

PHILLIP A. TALBERT
Acting United States Attorney

Dated:

8/19/16



ANDRE M. ESPINOSA
Assistant United States Attorney

EXHIBIT "A"
Factual Basis for Plea(s)

If this case were to proceed to trial, the United States would prove the following facts beyond a reasonable doubt:

Summary of the Scheme

Barbara Antonucci ("Antonucci") was an unlicensed tax preparer who prepared returns for low-income clients seeking to maximize tax refunds. Those clients paid between \$500 and \$1,000 for each return Antonucci prepared. Antonucci prepared and filed false claims with the Internal Revenue Service ("IRS") utilizing clients' federal income tax returns for tax years 2007 through 2013 in a scheme to obtain false refunds. After May 2010, Antonucci was assisted by co-defendant Sherry Taggart ("Taggart"), with whom Antonucci agreed and conspired, between May 2010 and March 2014, to prepare and file false claims with the IRS, to facilitate the same scheme to obtain false refunds.

Antonucci and Taggart used computers to complete fraudulent tax returns. Taggart entered false information into electronic returns stored in a database she and Antonucci maintained, called: nightmare. Antonucci and Taggart caused those false returns to be submitted electronically or through the mail. Antonucci also caused certain returns to be prepared and submitted without the knowledge or consent of clients for tax years in which those clients had not already filed a return. Antonucci kept those refunds.

The fraudulent returns Antonucci and Taggart prepared and caused to be filed reported false wages and dependents and, in many cases, qualified the clients for the refundable Earned Income Credit ("EIC") when the client's true wages or family situation would have qualified the client for no credit or a lower credit. Most of the fraudulent returns listed wages associated with self-employment not documented by a Form W-2, such as "housekeeper." To falsely associate clients with unrelated dependents, Antonucci and Taggart used identification information for minors that Antonucci purchased from those minors' guardians and others. Antonucci and Taggart stored that information in ledgers.

Background of Investigation

In March 2011, investigators searched a residence where Antonucci, Taggart, and Antonucci's boyfriend, L.L., were located. In a bedroom in which Antonucci and L.L. resided, investigators found tax documents, eleven journals with personal identifying information ("PII") for several hundred people, and more than fifty debit cards in the names of individuals not living at the house. Investigators also

1 recovered laptop computers and an external hard drive in Antonucci's bedroom, on which were found
2 tax preparation software, more than 1,000 tax returns, and tax preparation documents. Antonucci told
3 investigators the debit cards were payment from friends for her preparation of their tax returns.

4 In February 2012, L.L. and another man were arrested at a motel in Rocklin, California.
5 Investigators searched the motel room and recovered multiple credit cards, documents containing PII for
6 other individuals, and a computer. Names identified on many of the seized documents included Barbara
7 Antonucci and Sherry Taggart. The seized computer contained the "Turbo Tax" program for tax years
8 2008 through 2011, and evidence that those programs were used to access Turbo Tax files stored on
9 external media. Stored web pages showed that tax returns had been submitted electronically. "Barbara"
10 was the computer's registered owner the name of a user account. The motel's desk manager stated she
11 knew Antonucci and Taggart, had seen them with L.L. at the hotel on multiple occasions, and that
12 Antonucci and Taggart generally stayed in room adjacent to L.L.'s room.

13 In June 2012, investigators searched Antonucci's residence in Yuba City, California, and found
14 multiple notebooks containing PII (including names, social security numbers, addresses and dependent
15 information) for individuals not living in the house, debit cards for individuals not living in the house,
16 tax documents for individuals not living in the house, and computers and external hard drives containing
17 tax preparation software, tax documents, and PII for individuals not living at the house. Antonucci told
18 investigators she was not a licensed tax preparer but stayed current on tax information. She stated
19 people called her all the time to prepare tax returns. Antonucci claimed that the debit cards in the
20 residence were the result of recent winnings at Red Hawk Casino, and claimed to have won \$90,000 in
21 2011, and \$40,000 in the first half of 2012. (In fact, subsequent information obtained from Red Hawk
22 and Thunder Valley casinos showed that Antonucci lost more than \$230,000 between 2008 and 2012.
23 Investigators also learned that in January 2012, Antonucci paid \$28,000 in cash for a 2009 Lexus.)
24 Taggart was at the residence and gave a statement to investigators.

25 In April 2014, investigators searched a residence in El Dorado Hills, California, at which
26 Antonucci and Taggart were living, and recovered multiple notepads and notebooks containing PII
27 (including names, social security numbers, addresses and dependent information) for individuals not
28 living in the house, debit cards for individuals not living in the house, IRS correspondence and tax

1 documents for individuals not living in the house, and several computers.

2 The IRS's Scheme Development Center analyzed tax returns connected to Antonucci, Taggart,
3 any others identified in the investigation, or any of the PII. For tax years 2007 through 2013, the IRS
4 located more than 550 returns, and more than \$3.5 million dollars in refund requests, connected to
5 Antonucci and Taggart through common IP addresses; common incomes; common names, social
6 security numbers, dependents, or addresses. Many of the returns used fraudulent dependent information.

7 Interviews of Clients

8 Investigators interviewed at least twenty-five clients for whom Antonucci and Taggart prepared
9 and caused returns to be filed during the conspiracy. All stated either that: (i) dependents and/or income
10 included on their returns were not legitimate; (ii) they did not authorize Antonucci to file returns on their
11 behalf; or (iii) Antonucci purchased PII from them. For example, D.G. stated Antonucci prepared
12 D.G.'s tax returns for tax years 2009, 2010, and 2011, using a computer at Antonucci's home.
13 Antonucci told D.G. she could make D.G.'s tax return look "better" and get D.G. extra money. D.G.
14 had no dependents D.G. could claim. Antonucci added false dependents to D.G.'s returns and increased
15 D.G.'s income on the returns. D.G.'s tax refund came to about \$7,000 for each tax year. D.G. paid
16 Antonucci approximately \$1,000 in cash for preparing D.G.'s returns each year. D.G. believed Sherry
17 (a friend of Antonucci's whose last name D.G. did not know) also prepared returns for Antonucci. D.G.
18 observed Sherry typing tax returns for others. D.G. never received a copy of her completed tax returns.

19 H.W. told investigators Antonucci prepared and e-filed H.W.'s returns for tax years 2009, 2010
20 and 2011. H.W. never saw the returns and Antonucci never went over the returns with H.W. H.W. paid
21 Antonucci \$500 for each tax return. Investigators discovered fraudulent tax documents in the name of
22 H.W., for tax year 2007, on a hard drive seized from one of Antonucci's residences. A return for tax
23 year 2007, in the name of H.W., was filed with the IRS and resulted in a refund of \$3,118. H.W. never
24 gave Antonucci permission to prepare a return for tax year 2007.

25 J.E. stated that J.E. met Antonucci through L.L., and that Antonucci prepared J.E.'s returns for
26 tax years 2009, 2010, and 2011, at Antonucci's various homes in Sacramento. Antonucci added two
27 unknown dependents to J.E.'s tax return for tax year 2011. Antonucci told J.E. to call the dependents
28 J.E.'s nieces. J.E. was aware that Antonucci bought dependent information from people for \$500 each,

1 and introduced Antonucci to a woman who was willing to sell Antonucci dependent information. J.E.
2 stated a woman named Sherry also prepared tax returns. J.E. never received a copy of his completed
3 returns.

4 G.B. told investigators Antonucci paid G.B. for permission to use G.B.'s children's PII and to
5 list those children as dependents on returns Antonucci prepared and caused to be filed on behalf of other,
6 unrelated clients. G.B.'s minor children's PII was found in one of the several notebooks maintained by
7 Antonucci and seized during law enforcement searches. G.B.'s children were listed as dependents on
8 several returns Antonucci prepared and caused to be filed, including three returns filed in the name of
9 C.S., as charged in Counts Twenty through Twenty-Two of the Indictment.

10 C.S. told investigators C.S. had not worked since approximately 2001 and had never filed tax
11 returns. C.S.'s "uncle," J.E., used to live with a woman named Barbara in Carmichael, California.
12 Investigators discovered fraudulent tax documents in the name of C.S., for tax year 2007, 2008, 2009,
13 and 2010, on a hard drive seized from one of Antonucci's residences. Return for tax years 2008, 2009,
14 and 2010, in the name of C.S., were filed with the IRS and resulted in a refund of \$6,119; \$7,210; and
15 \$7,218, respectively. Those returns, charged in Counts Twenty through Twenty-Two of the Indictment,
16 listed G.B.'s children as C.S.'s dependents.

17 The Offenses to Which Defendant is Pleading Guilty

18 Based on the foregoing, at trial the government would prove beyond a reasonable doubt that,
19 between on or about March 5, 2008 and continuing through on or about March 3, 2014, Antonucci and
20 Taggart knowingly agreed and conspired to prepare and cause to be prepared, and presented and caused
21 to be presented to the IRS, an agency of the United States Department of Treasury, false, fictitious, and
22 fraudulent claims on behalf of themselves and others, as charged in Count One of the Indictment.

23 The Indictment also charges Antonucci with submitting twenty-one false claims from January
24 15, 2009 through February 27, 2013, each claiming refunds ranging from approximately \$3,792 to
25 \$7,420. Antonucci knowingly prepared and caused to be prepared, and presented and caused to be
26 presented to the IRS, an agency of the United States Department of Treasury, each of the twenty-one tax
27 returns charged in the Indictment, on the dates listed therein, knowing that the claims were false,
28 fictitious and fraudulent, in that the named individuals were not entitled to the refunds in the amount

1 requested. Sixteen of the twenty false returns contained fraudulent income. All of the twenty false
 2 returns listed dependents not related to or associated with the client-taxpayer.

3 With respect to Count Thirteen, on or about February 13, 2011, Antonucci prepared and caused
 4 to be prepared, and presented and caused to be presented to the IRS, an agency of the United States
 5 Department of Treasury, a Form 1040A in the name of D.G., claiming a refund of \$7,420, knowing that
 6 the claim was false, fictitious and fraudulent, in that D.G. was not entitled to the refund in the amount
 7 requested. As set forth above, D.G. confirmed that the return: (i) fraudulently claimed as dependents:
 8 A.O. (niece) and C.O. (nephew); (ii) overstated D.G.'s income as \$16,505; and (iii) included false
 9 occupation information ("house cleaning") unsupported by a W2. The return was filed from an IP
 10 address associated with Antonucci and from which approximately 125 other tax returns were e-filed
 11 between 2010 and 2011. The IRS paid the requested refund of \$7,420.

12 The twenty-one false claims with which Antonucci is charged in the Indictment total \$135,629,
 13 of which the IRS actually issued \$94,740.32 as tax refunds. However, Antonucci caused more than 550
 14 tax returns to be filed with the IRS between tax years 2007 and 2012, seeking refunds, totaling more
 15 than \$3,500,000. A minority of those returns did not include false information. The IRS stopped more
 16 than \$721,000 of refund payments but issued more than \$2,590,000 in claimed refunds. Investigators
 17 conducted an audit of the returns Antonucci caused to be filed during the conspiracy. That audit focused
 18 on returns containing false dependents and excess EIC eligibility, and which resulted in refund actually
 19 paid by the IRS. Those claims resulted in payment of approximately \$1,895,833 in total overpayment to
 20 claimants. Hence, the intended and actual loss due to fraud for all claims was over \$1,500,000 and
 21 under \$3,500,000.

22
 23 *I have read and carefully reviewed the Factual Basis for Plea with my attorney. I agree that as it concerns my*
 24 *conduct, it is correct. I also agree that if this matter proceeded to trial, the United States could establish each of the facts*
 25 *contained within the Factual Basis for Plea beyond a reasonable doubt, and that those facts satisfy the elements of the*
 26 *offenses to which I am pleading guilty.*

27 Dated:

28

 BARBARA ANTONUCCI
 Defendant