

1 PHILLIP A. TALBERT  
United States Attorney  
2 MICHAEL G. TIERNEY  
Assistant United States Attorney  
3 2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
4 Telephone: (559) 559-4000  
Facsimile: (559) 559-4099  
5

6 Attorneys for the  
United States of America  
7  
8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MARY WILLIAMS,

16 Defendant.  
17  
18

CASE NO. 1: 1 6 CR - 0 0 211 DAD BAM

MEMORANDUM OF PLEA  
AGREEMENT PURSUANT TO RULE  
11(c) OF THE FEDERAL RULES OF  
CRIMINAL PROCEDURE

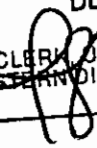
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19 Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, the United States of  
20 America, by and through Phillip A. Talbert, the Acting United States Attorney for the Eastern  
21 District of California, and Assistant United States Attorney Michael G. Tierney, and Defendant,  
22 Mary Williams, and her attorney, Jeffrey T. Hammerschmidt, have agreed as follows.

23 This document contains the complete Memorandum of Plea Agreement ("Plea  
24 Agreement") between the United States Attorney's Office for the Eastern District of California  
25 ("Government") and defendant Mary Williams regarding this case. This Plea Agreement is  
26 limited to the United States Attorney's Office for the Eastern District of California and cannot  
27 bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.  
28  
29

**FILED**

DEC 22 2016

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

1       1.     Charges.

2       The defendant acknowledges that she has been charged in a one-count information:  
3       Embezzlement from a Pension Plan, in Violation of Title 18, United States Code, Section  
4       664.

5       2.     Nature, Elements and Possible Defenses.

6       The defendant has read the charges against her contained in the information, and those  
7       charges have been fully explained to her by her attorney. Further, the defendant fully  
8       understands the nature and elements of the crimes in the sole count of the information to which  
9       she is pleading guilty, together with the possible defenses thereto, and has discussed them with  
10      her attorney.

11      COUNT ONE:

12      The elements of the crime of Embezzlement from a Pension Plan, in violation of Title 18,  
13      United States Code, Section 664, are:

14      (a) That between June 2011 and November 2016, the defendant embezzled and  
15          unlawfully and willfully abstracted and converted to her own use the monies, funds,  
16          and other assets;

17      (b) At the time, the monies, funds, and other assets belonged to the Aeroplate  
18          Corporation Defined Benefit Pension Plan; and

19      (c) That the Aeroplate Corporation Defined Benefit Pension Plan was an employee  
20          pension benefit plan subject to the provisions of Title I of the Employee Retirement  
21          Income Security Act ("ERISA") of 1974.

22      3.     Agreements by the Defendant.

23      (a)     Defendant agrees that this plea agreement shall be filed with the court and  
24      become a part of the record of the case.

25      (b)     Defendant agrees that, at or before the entry of plea proceeding, she will sign a  
26      written waiver of prosecution by information and will consent to proceed by information rather  
27      than information. Further, the defendant has reviewed the information in this case and fully  
28      understands the charge contained therein.

1 (c) Defendant agrees to enter a plea of guilty to:

2 Count One of the information which charges her with Embezzlement from a  
3 Pension Plan, in violation of Title 18, United States Code, Section 664.

4 (d) Defendant knowingly and voluntarily waives her Constitutional and statutory  
5 rights to appeal her plea, conviction, restitution imposed, forfeiture order and sentence. This  
6 waiver of appeal includes, but is not limited to, an express waiver of defendant's right to appeal  
7 her plea, conviction, restitution imposed, forfeiture order and sentence on any ground, including  
8 any appeal right conferred by 18 U.S.C. § 3742, and defendant further agrees not to contest her  
9 plea, conviction, restitution imposed, forfeiture order and sentence in any post-conviction  
10 proceeding, including but not limited to a proceeding under 28 U.S.C. § 2255, except for non-  
11 waivable claims.

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

16 (e) Defendant agrees her base offense level is six (6) pursuant to Section 2B1.1(a)(2)  
17 of the Guidelines Manual; plus fourteen (14) levels for loss more than \$550,000 but less than  
18 \$1,500,000 (§ 2B1.1(b)(1)(H)).

19 (g) Defendant reserves the right to recommend a downward departure pursuant to  
20 Title 18, United States Code, Section 3553(a), including recommending a sentence that does not  
21 include a term of imprisonment.

22 (h) Defendant understands that the Court must consult the Federal Sentencing  
23 Guidelines (as promulgated by the Sentencing Commission pursuant to the Sentencing Reform  
24 Act of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United  
25 States v. Booker and United States v. Fanfan, 543 U.S. 220 (2005)), and must take them into  
26 account when determining a final sentence. Defendant understands that the Court will determine  
27 a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing  
28 Guidelines. Defendant further understands that the Court will consider whether there is a basis

1 for departure from the guideline sentencing range (either above or below the guideline  
2 sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to  
3 a degree, not adequately taken into consideration by the Sentencing Commission in formulating  
4 the Guidelines. Defendant further understands that the Court, after consultation and  
5 consideration of the Sentencing Guidelines, must impose a sentence that is reasonable in light of  
6 the factors set forth in 18 U.S.C. § 3553(a).

7 (i) Defendant agrees to waive all rights under the "Hyde Amendment," Section 617,  
8 P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in  
9 connection with the investigation and prosecution of all charges in the above-captioned matter  
10 and of any related allegations (including without limitation any charges to be dismissed pursuant  
11 to this Agreement and any charges previously dismissed).

12 (j) Defendant agrees the conduct to which she is pleading requires mandatory  
13 restitution pursuant to Section 3663A(c)(1)(A)(ii) of Title 18, United States Code, and agrees to  
14 pay restitution to the victims for the total loss to the victims of approximately \$900,000 as a  
15 result of the scheme and in an amount determined by the court at sentencing, including losses  
16 covered in those counts to be dismissed as part of the plea agreement.

17 (k) Defendant agrees to pay a special assessment of \$100 at the time of sentencing by  
18 delivering a check or money order payable to the United States District Court to the United  
19 States Probation Office immediately before the sentencing hearing.

20 (l) Defendant agrees to make a full and complete disclosure of defendant's assets and  
21 financial condition, and will complete the United States Attorney's Office's "Authorization to  
22 Release Information" and "Financial Affidavit" within five (5) weeks from the entry of the  
23 defendant's change of plea. The defendant also agrees to have the court enter an order to that  
24 effect.

25 (m) Defendant agrees to forfeit to the United States voluntarily and immediately all  
26 right, title, and interest to any and all assets seized pursuant to 18 U.S.C. §§ 981(a)(1)(C),  
27 981(a)(1)(D), 982(a)(2), 982(a)(2)(B), 1028(b) and 28 U.S.C. § 2461(c), and Fed. R. Crim. P.  
28 32.2(b)(1). Defendant agrees to fully assist the government in the forfeiture of any seized assets

1 or assets later determined to be forfeitable and to take whatever steps are necessary to pass clear  
2 title to the United States. Defendant shall not sell, transfer, convey, or otherwise dispose of any  
3 assets found to be connected to the criminal events charged in the Information.

4 Defendant agrees not to file a claim to any of the seized property in any criminal  
5 proceeding or civil proceeding, administrative or judicial, which is or may be initiated.  
6 Defendant agrees to waive right to notice of any forfeiture proceeding involving such property,  
7 and agrees to not file a claim or assist others in filing a claim in such a proceeding.

8 The defendant waives the notice provisions of Fed. R. Crim. P. 7(c) and 32.2(a), waives  
9 oral pronouncement of forfeiture at the time of sentencing and any defects in such  
10 pronouncement that pertain to forfeiture, and waives any defenses to forfeiture, including any  
11 defense predicated on the Ex Post Facto, Double Jeopardy, and Excessive Fines Clauses of the  
12 United States Constitution. The defendant knowingly and voluntarily waives any right to jury  
13 trial in any criminal or civil forfeiture proceeding.

14 (n) If the defendant's conviction on the count to which she is pleading is ever vacated  
15 at the defendant's request, or her sentence is ever reduced at her request, the government shall  
16 have the right to: (1) prosecute the defendant on any of the counts to which she pleaded guilty;  
17 (2) reinstate any counts that may be dismissed under this agreement; and (3) file any new charges  
18 that would otherwise be barred by this agreement. The decision to pursue any or all of these  
19 options is solely in the discretion of the United States Attorney's Office. By signing this  
20 agreement, the defendant agrees to waive any objections, motions, and defenses she might have  
21 to the government's decision, including Double Jeopardy. In particular, she agrees not to raise  
22 any objections based on the passage of time with respect to such counts including, without  
23 limitation, any statutes of limitation or any objections based on the Speedy Trial Act or the  
24 Speedy Trial Clause of the Sixth Amendment.

25 (o) If it is determined that the defendant has violated any provision of this Agreement  
26 or if the defendant successfully moves to withdraw her plea: (1) all statements made by the  
27 defendant to the government or other designated law enforcement agents, or any testimony given  
28 by the defendant before a grand jury or other tribunal, whether before or after her Agreement,

1 shall be admissible in evidence in any criminal, civil, or administrative proceedings hereafter  
2 brought against the defendant; and (2) the defendant shall assert no claim under the United States  
3 Constitution, any statute, the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules  
4 of Evidence, or any other federal rule, that statements made by the defendant before or after this  
5 Agreement, or any leads derived therefrom, should be suppressed. By signing this Agreement,  
6 the defendant waives any and all rights in the foregoing respects.

7  
8 4. Agreements by the Government.

9 (a) The government will recommend a two-level reduction (if the offense level is less  
10 than 16) or a three-level reduction (if the offense level reaches 16) in the computation of her  
11 offense level if the defendant clearly demonstrates acceptance of responsibility for her conduct  
12 as defined in Section 3E1.1 of the United States Sentencing Commission Guidelines Manual.

13 (b) The government agrees that the defendant's base offense level is six (6) pursuant  
14 to Section 2B1.1(a)(2) of the Guidelines Manual; plus fourteen (14) levels for loss more than  
15 \$550,000 but less than \$1,500,000 (§ 2B1.1(b)(1)(H)).

16 (c) The government may recommend any lawful sentence to the Court, up to and  
17 including the statutory maximum for the count of conviction.

18 (d) The defendant understands that if the defendant violates any of her conditions of  
19 pre-trial release the government may, in addition to the agreements set forth above and  
20 irrespective of its agreement in paragraph 4(c), request imprisonment for her violation of any  
21 pre-trial conditions.

22 (e) The defendant acknowledges and understands that the government makes no other  
23 representations to her regarding fines, whether any other specific offense characteristics apply to  
24 her conduct under Chapters Two or Three of the Sentencing Guidelines, the restitution owed, her  
25 criminal history or criminal history points under Chapter Four or whether additional  
26 enhancements or reductions under Chapter Three or Five of the United States Sentencing  
27 Guidelines apply and defendant understands that the government is free to comment and to make  
28 recommendations to the court and the probation office regarding those matters.

1           5.     Factual Basis.

2           Defendant will plead guilty because she is in fact guilty of the crimes set forth in Count  
3 One of the information. Defendant also agrees that the following are the facts of this case,  
4 although she acknowledges that, as to other facts, the parties may disagree:

5                     From approximately June 2011 to November 2016, in the State and  
6                     Eastern District of California, the defendant willfully embezzled and  
7                     converted to her own approximately \$900,000 of monies, funds, and assets  
8                     belonging to the Aeroplate Corporation Defined Benefit Pension Plan (the  
9                     Plan). The Plan has had between thirteen (13) and twenty-one (21)  
10                    employee-participants.

11                   The defendant was the Chief Executive Officer of Aeroplate and was a  
12                   Plan Administrator of and fiduciary to the Plan. In December 2004, the  
13                   defendant caused the Plan to purchase real estate parcels on Fruit Avenue  
14                   in Fresno, California (the Fruit Avenue Properties). The properties were  
15                   later appraised at over \$900,000 in value.

16                   In August 2006, the defendant caused title to the Fruit Avenue Properties  
17                   to be transferred out of the Plan. During this time, the defendant caused  
18                   the owner of the Fruit Avenue Properties to use them to benefit Aeroplate,  
19                   and not the Plan. For example, the owner used the Fruit Avenue Properties  
20                   to secure a bond for Aeroplate, and took out over \$300,000 in loans that  
21                   were secured by the Fruit Avenue Properties.

22                   At no point after August 2006 did the Plan hold legal title to the Fruit  
23                   Avenue Properties, but from 2009 onward, the defendant caused the Plan  
24                   to report to the Department of Labor that it did own the Fruit Avenue  
25                   Properties.

26                   In June 2011, the defendant took legal title to the Fruit Avenue Properties  
27                   in her own name. They were never returned to the Plan, nor did the Plan  
28                   receive any money from the transfers or loans of the Fruit Avenue  
29                   Properties

30                   The Plan became ultimately became insolvent and responsibility for  
31                   paying the obligations of the Plan passed to the Pension Benefit Guaranty  
32                   Corporation.

33           6.     Potential Sentence.

34           The following is the maximum potential sentence which defendant faces:

35           (a) Imprisonment.

36                   Maximum: 5 years (Count One)

37           (b) Fine.

38                   Maximum: \$250,000

1 (c) Both such fine and imprisonment.

2 (d) Restitution

3 (e) Term of Supervised Release:

4 Maximum: 3 years

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

7 (f) Penalty Assessment.

8 One Hundred dollars (\$100.00).

9 7. Waiver of Rights.

10 Defendant understands that by pleading guilty she surrenders certain rights, including the  
11 following:

12 (a) If defendant persisted in a plea of not guilty to the charges against her, she would  
13 have the right to be represented by an attorney at all stages of the proceedings, and would have a  
14 right to a public and speedy trial. The trial could be either a jury trial or a trial by a judge sitting  
15 without a jury. Defendant has a right to a jury trial. However, in order that the trial be  
16 conducted by the judge sitting without a jury, defendant, the government and the judge all must  
17 agree that the trial be conducted by the judge without a jury.

18 (b) If the trial were a jury trial, the jury would be composed of twelve lay persons  
19 selected at random. Defendant and her attorney would have a say in who the jurors would be by  
20 removing prospective jurors for cause where actual bias or other disqualification is shown, or  
21 without cause by exercising peremptory challenges. The jury would have to agree unanimously  
22 before it could return a verdict of either guilty or not guilty. The jury would be instructed that  
23 defendant is presumed innocent and that it could not convict her unless, after hearing all the  
24 evidence, it was persuaded of her guilt beyond a reasonable doubt.

25 (c) If the trial were held before a judge without a jury, the judge would find the facts  
26 and determine, after hearing all the evidence, whether or not the judge was persuaded of the  
27 defendant's guilt beyond a reasonable doubt.  
28

1 (d) At a trial, whether by a jury or a judge, the government would be required to  
2 present its witnesses and other evidence against defendant. Defendant would be able to confront  
3 those government witnesses and her attorney would be able to cross-examine them. In turn,  
4 defendant could present witnesses and other evidence on her own behalf. If the witnesses for  
5 defendant would not appear voluntarily, she could require their attendance through the subpoena  
6 power of the Court. At trial, the defendant would also have the right to assistance of legal  
7 counsel. If she could not afford legal counsel, one would be appointed for her by the court at no  
8 expense to her.

9 (e) At a trial, defendant would have a privilege against self-incrimination so that she  
10 could decline to testify, and no inference of guilt could be drawn from this refusal to testify.

11 Defendant understands that by pleading guilty she is waiving all of the rights set forth  
12 above and defendant's attorney has explained those rights to her and the consequences of her  
13 waiver of those rights.

14 8. Questions by Court.

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

18 9. Entire Agreement.

19 This plea of guilty is freely and voluntarily made and not the result of force or threats or  
20 of promises apart from those set forth in this plea agreement. There have been no  
21 representations or promises from anyone as to what sentence this Court will impose.

22 10. Court not a Party.

23 It is understood by the parties that the sentencing court is neither a party to nor bound by  
24 this agreement and the sentencing judge is free to impose the maximum penalties as set forth in  
25 paragraph 6. Further, in making its sentencing decision, the Court may take into consideration  
26 any and all facts and circumstances concerning the criminal activities of defendant, including  
27 activities which may not have been charged in the information.

11. Presentence Report.

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

Dated:

PHILLIP A. TALBERT  
Acting United States Attorney


By:

MICHAEL G. TIERNEY  
Assistant U.S. Attorney

Dated: 12/22/16

  
MARY WILLIAMS  
Defendant

Dated: 12-22-16

  
JEFFREY T. HAMMERSCHMIDT  
Attorney for Defendant