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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

**FELONY**

**BILL OF INFORMATION FOR CONSPIRACY TO MAKE  
FALSE STATEMENTS AND REPRESENTATIONS IN CONNECTION WITH A  
MULTIPLE EMPLOYER WELFARE ARRANGEMENT AND NOTICE OF FORFEITURE**

UNITED STATES OF AMERICA

\*

CRIMINAL NO.

v.

\*

SECTION:

BRENT ANTHONY SILVA

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VIOLATIONS: 18 U.S.C. § 371

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29 U.S.C. § 1131(b)

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29 U.S.C. § 1149

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The United States Attorney charges that:

**COUNT 1**

**A. AT ALL TIMES MATERIAL HEREIN:**

1. The Total Financial Group ("TTFG") was a Louisiana business incorporated with the Louisiana Secretary of State on about January 6, 2005. TTFG's headquarters was located at various addresses within the Eastern District of Louisiana, and most recently, 406 N. Florida Street, Covington, Louisiana.

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2. Unindicted co-conspirator De.J., a resident of the Eastern District of Louisiana, incorporated, owned, operated, managed, and served as the Chief Executive Officer (“CEO”) of TTFG.

3. Unindicted co-conspirator Do.J., a resident of the Eastern District of Louisiana, owned and served as the Chief Operating Officer of TTFG.

4. TTFG had approximately thirteen (13) employees and at least fifty-six (56) independent contractors who acted as sales agents for TTFG.

5. The defendant, **BRENT ANTHONY SILVA (“SILVA”)**, a United States citizen who resided within the Eastern District of Louisiana, was a certified public accountant (“CPA”) who was employed by De.J. and Do.J. from about 2013 through about January 2017.

6. **SILVA** performed numerous functions at TTFG, including preparing TTFG’s federal and state income tax returns and the personal federal and state income tax returns for De.J. and Do.J. **SILVA** was also the primary point of contact for all accounting-related issues that arose among TTFG and its employees, as well as when prospective employer-clients had accounting-related questions about TTFG’s health care benefits program, Classic 105.

Classic 105

7. De.J. and Do.J. created and marketed a product called the “Classic 105 Program” (“Classic 105”). Classic 105 purported to be a Medical Reimbursement Account program (“MRA”), which provided for the reimbursement to participating employees (“employee-participants”) of qualifying medical expenditures not paid for under the employer’s (employer-client’s) primary insurance plan.

8. Classic 105 was marketed to employer-clients as a supplemental group health benefits plan for their employees, which employer-clients could adopt for their employee-clients. Employer-clients adopting Classic 105 were also required to offer a primary health insurance plan. Employee-participants participating in Classic 105 were also required to participate in their employer-client's primary health insurance plan unrelated to Classic 105.

9. MRAs, including Classic 105, were governed by the Internal Revenue Code.

10. Classic 105 plans were established or maintained by employer-clients of TTFG for the benefit of their employees and were employee benefit plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), which is enforced by the Department of Labor, Employment Benefit Security Administration ("EBSA"). Classic 105 was an arrangement that was established and maintained for the purpose of offering or providing medical benefits to the employees of two or more employers or to their beneficiaries and was a "multiple employer welfare arrangement" ("MEWA"), as that term is defined by Title 29, United States Code, Section 1002(40).

11. Classic 105 plans purported to be a combination of an MRA plan with employee-participant contributions funded by a loan arrangement.

12. TTFG, De.J., Do.J., and **SILVA** represented that contributions, fees, benefits received, and costs paid would be tax exempt (*i.e.*, calculated and made with pre-tax dollars), thereby reducing an employee-participant's taxable income.

13. According to TTFG'S marketing materials, employee-participants made contributions to Classic 105 based on their family composition. Employee-participants with individual coverage purportedly contributed approximately \$1,000 per month to Classic 105.

Employee-participants with family coverage purportedly contributed approximately \$1,600 per month to Classic 105.

14. Because the required employee contribution amount was so high, Classic 105 purported to arrange for a lender to loan employees money for these contributions. TTFG represented to prospective employer-clients that the loans would be provided by a third-party lender, most often Diamond Financial LLC (a/k/a Diamond, FLA, LLC) (“Diamond FLA”).

15. TTFG informed prospective employer-clients that employee-participants would never have to make out-of-pocket payments to repay the loan. Instead, according to TTFG an employee-participant’s loans would be repaid by an insurance policy secured on the life of the employee-participant and payable to the lender at the time of the employee-participant’s death (a/k/a “credit life policies” and “death benefit policies”). TTFG’s marketing materials stated that there would be “no net cost” to employee-participants in Classic 105 and that most employee-participants “will receive an increase in their net take home pay.”

16. TTFG claimed that contribution amounts would be held in trust in a contribution account TTFG set up for each individual employee-participant and that when an employee-participant made a claim for reimbursement, the reimbursement came from their personal contribution account.

17. In addition to contribution amounts, TTFG also charged employee-participants a monthly administrative fee. TTFG charged each employee-participant a fee of approximately \$150 per month for individual coverage or approximately \$250 per month for family coverage.

18. TTFG also charged employee-participants’ employers a monthly fee of approximately five (5) percent of each employee-participant’s contribution.

19. TTFG pooled all the fees it collected into a single business operating account.

20. Classic 105 paid seventy-five (75) percent of covered out-of-pocket expenses, and it explicitly excluded reimbursement for costs related to vision, dental, pharmacy, assistant surgeon, pre-existing pregnancy, and weight reduction surgeries.

21. To receive reimbursement, an employee-participant was required to submit a claim within sixty days from the date the medical service was provided.

22. Reimbursement was limited to the employee-participant's accrued account value at the time of the claim. An employee-participant's purported contribution amount expired at the end of each calendar year, and any unused balance did not roll over to the following year.

23. TTFG's licensed sales agents were required to undergo training developed largely by De.J. and participate in regular calls with De.J. and others. The trainings and calls focused on approved methods for marketing Classic 105 and frequently concerned matters related to federal tax laws.

24. At its peak, in late 2016, over 350 employer-clients and 4,400 employee-participants nationwide were enrolled in TTFG's Classic 105 program.

25. TTFG was able to pay the limited number of claims from the fees they collected and deposited into the single business operating account and enjoy a significant remainder.

**B. THE CONSPIRACY:**

Beginning at a time unknown, and continuing through at least January 10, 2017, in the Eastern District of Louisiana and elsewhere, the defendant, **BRENT ANTHONY SILVA**, and others known and unknown to the United States Attorney did knowingly and willfully combine, conspire, and agree:

26. In connection with Classic 105, an arrangement that is a multiple employer welfare arrangement described in Section 1002(40) of title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1002(4), to make and cause to be made a false statement and false representation of fact, knowing it to be false, in connection with the marketing and sale of such arrangement, to employee-participants, employer-clients, and agents of such persons concerning the financial condition, solvency, and benefits provided by Classic 105, in violation of Title 29, United States Code, Sections 1131(b) and 1149.

**C. PURPOSE OF THE CONSPIRACY:**

27. The purpose of the conspiracy was for **SILVA**, and others known and unknown to the United States Attorney, to have employer-clients and their employees participate in Classic 105 and, in so doing, pay significant fees.

**D. MANNER AND MEANS OF THE CONSPIRACY:**

28. During the course and in furtherance of the conspiracy, in addition to other acts, the defendant:

- a) Knew that not a single loan funded employee contributions to Classic 105, that TTFG procured no insurance policies related to Classic 105, that employee-participants made no actual contributions to Classic 105, and that no credit life policies existed to serve as collateral for the loans;
- b) Was aware that prospective employer-clients and actual employer-clients were told that in lieu of employee-participants receiving loan payments and employer-clients sending TTFG money for employee-participants’ contributions, employer-clients would simply have a “paper transaction” on

the books and have the lender send loan money directly to TTFG to hold in a trust account;

- c) Knew that the only funds that actually transferred from employer-clients and employee-participants to TTFG were fees;
- d) Replaced Do.J. as the registered agent for Diamond FLA at the direction of De.J. and Do.J. to disguise Do.J.'s affiliation with Diamond FLA and cause Diamond FLA to appear to be unrelated to and unaffiliated with TTFG;
- e) Failed to disclose that Diamond FLA was not a third party unaffiliated with TTFG, De.J., and Do.J.;
- f) Caused to be represented to prospective employer-clients that an employee-participant's taxable wages would be reduced in the amount of the contribution and administrative fee;
- g) Caused to be represented to prospective employer-clients that an employer-client benefitted financially from participating in Classic 105 because the employer-client would only pay a five (5) percent fee to TTFG instead of the 7.65 percent payroll tax it typically owed to the Internal Revenue Service pursuant to the Federal Insurance Contributions Act (FICA);
- h) Was aware that all money collected from employee-participants and employer-clients were deposited into TTFG's single business operating account and that all claims were paid from that account;
- i) Was aware that TTFG did not establish an individual contribution account for each employee-participant; and

- j) Knew that the limited scope of the benefits provided by Classic 105 meant that its claims rate would be low.

**E. OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY:**

In furtherance of the conspiracy and to achieve the objects thereof, the defendant, **BRENT ANTHONY SILVA**, and others known and unknown to the United States Attorney, committed and caused to be committed the following overt acts, among others, in the Eastern District of Louisiana and elsewhere:

29. On or about January 23, 2014, Do.J. filed paperwork with the Louisiana Secretary of State making **SILVA** a manager of Diamond FLA. Do.J. remained the registered agent.

30. On about December 17, 2014, a **TTFG** sales agent who, in an attempt to answer questions posed by a prospective employer-client in Classic 105, told **SILVA** that he “did not know anything about the loan program” and asked **SILVA** to be “very involved” with the sale to the prospective employer-client. In response, on December 17, 2014, **SILVA** told the sales agent via email that the scenario described in the marketing materials “reflects all employees receiving a \$22,400 loan and deducting pre-tax \$15,000 flat for the 105 account,” well-knowing that **TTFG** would not arrange for employee-participants to receive loans and that the marketing and sales descriptions about the operation, financial condition, and benefits provided by Classic 105 were false.

31. On about January 15, 2015, De.J., in consultation with **SILVA**, answered a question posed by a **TTFG** sales agent that originated with a Classic 105 employer-client. Knowing that **TTFG** secured no loans or death benefits and the representations to be false, De.J. stated:



The loans were provided through a private investor and at the end of the year those loans were purchased by [T]TFG. [T]TFG will carry those account receivables until the death of the employees. There is a death benefit in place that will cover the principle and interest (interest is figured from actuary tables on life expectancy). Let this be said in writing that the loan will not be called until the death of the employee.

I hope this answers all of your questions for your client and we look forward to serving them again next year.

32. On or about September 19, 2015, Do.J. submitted paperwork with the Louisiana Secretary of State making **SILVA** the registered agent of Diamond FLA.

All in violation of Title 18, United States Code, Section 371.

### **NOTICE OF FORFEITURE**

1. The allegations contained in Count 1 of this Bill of Information are hereby realleged and incorporated by reference for the purpose of alleging forfeiture to the United States pursuant to the provisions of Title 18, United States Code, Section 982(a)(7).

2. As a result of the offenses alleged in Count 1, defendant **BRENT ANTHONY SILVA**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any and all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense as a result of the violations of Title 18, United States Code, Section 371 and Title 29, United States Code, Section 1131, which is a Federal Health Care offense within the meaning of Title 18, United States Code, Section 24.

3. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

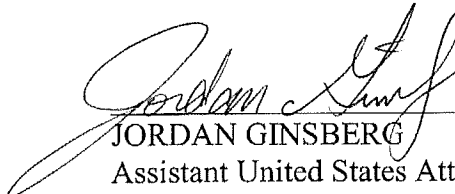
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, sold to, or deposited with, a third person;

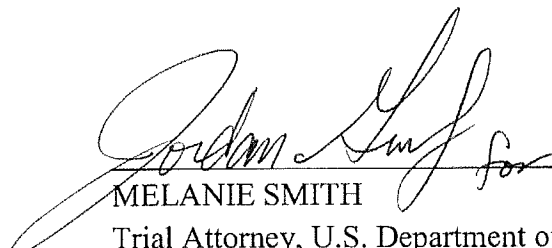
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Section 982(a)(7).

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