

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA \* CRIMINAL NO. 18-159

v. \* SECTION: "G"

BRENT ANTHONY SILVA \*

\* \* \*

FACTUAL BASIS

The defendant, **BRENT ANTHONY SILVA** ("SILVA" or "**DEFENDANT**"), has agreed to plead guilty as charged to the Bill of Information now pending against him, charging **BRENT ANTHONY SILVA** with conspiracy to make false statements and representations in connection with a multiple employer welfare arrangement, in violation of Title 18, United States Code, Section 371, and Title 29, United States Code, Sections 1131(b) and 1149. The Government and the **DEFENDANT** hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crime to which the **DEFENDANT** is pleading guilty. The Government and the **DEFENDANT** further stipulate that the Government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the Bill of Information now pending against the **DEFENDANT**.

Background

TTFG

The Government would show that **The Total Financial Group** ("TTFG") was a Louisiana business incorporated with the Louisiana Secretary of State on about January 6, 2005.

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Defendant th  
Defense Counsel MA

**TTFG's** headquarters was located at various addresses within the Eastern District of Louisiana, and most recently, 406 N. Florida Street, Covington, Louisiana. **De.J.**, a resident of the Eastern District of Louisiana, incorporated, owned, operated, managed, and served as the Chief Executive Officer (“CEO”) of **TTFG**. **Do.J.**, a resident of the Eastern District of Louisiana, owned and served as the Chief Operating Officer of **TTFG**. **TTFG** had approximately thirteen (13) employees and at least fifty-six (56) independent contractors who acted as sales agents for **TTFG**. From about 2012 through October 2014, **TTFG** maintained a business operating account at JPMorgan Chase Bank N.A., bearing account number XXXXX2170. In about August 2014, **TTFG** moved its operating account to Capital One Bank, N.A., into an account bearing number XXXXXX9107.

The Government would further establish that **SILVA** was a resident of the Eastern District of Louisiana. **SILVA** was a certified public accountant (“CPA”) who was employed by **De.J. and Do.J.** from about 2013 through January 2017. **SILVA** performed numerous functions at **TTFG**, including preparing **TTFG's** federal and state income tax returns, as well as 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.

The Government would further establish that **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 of qualifying medical expenditures not paid for under the employer’s primary insurance plan. **TTFG, De.J., and Do.J.** marketed the Classic 105 plan to employers as

a supplemental group health benefits plan for their employees, which employers could adopt for their employees. MRAs, including Classic 105, were governed by the Internal Revenue Code.

The Government would further establish that the 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).

Classic 105

The Government would further establish, through the introduction of documentary evidence and eyewitness testimony, that **De.J.**, **Do.J.**, and others marketed Classic 105 to prospective employer-clients as a combination of an MRA plan with employee-participant contributions funded by a loan arrangement. **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). Each licensed sales agent was required to undergo training developed largely by **De.J.** and to participate in regular calls with **De.J.** and others, which focused on approved methods for marketing Classic 105 and frequently concerned matters related to federal tax laws. At its peak, in late 2016, over 350 employer-clients and 4,400 employee-participants nationwide were enrolled in the Classic 105 program.

The Government would further establish, through the introduction of documentary evidence and the testimony of eyewitnesses that Classic 105 purported to be a secondary group



health benefits plan. Employer-clients adopting Classic 105 were also required to offer a primary health insurance plan. Employees participating in Classic 105 were required to also participate in their employer's primary health insurance plan unrelated to Classic 105. 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. To receive reimbursement, an employee-participant was required to submit a claim within sixty days from the date the medical service was provided. 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.

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. Purported contributions were made pre-tax, thereby reducing an employee-participant's taxable income. **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.

Because the required employee contribution amount was so high, Classic 105 purported to arrange for a lender to loan employee-participants 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"). **TTFG**

informed prospective employer-clients that the loan would not appear on employee-participants' credit reports and that employee-participants would never have to make out-of-pocket payments to repay the loan. 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"). Contrary to what **TTFG** represented to prospective employer-clients and actual employer-clients, the contribution, the loan, and the insurance plan, however, never actually occurred. In lieu of employee-participants receiving loan payments and employer-clients sending **TTFG** money for employee-participants' contributions, **De.J.** instructed **TTFG** agents to tell employer-clients that it would be easier and more efficient simply to have a "paper transaction" on the books and have the lender send loan money directly to **TTFG** to hold in a trust account. Consequently, the contribution and the loan component were simply designed by **TTFG**, **De.J.**, and **Do.J.** to disguise and reclassify taxable income as non-taxable income. In fact, **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." Among the marketing materials **De.J.** and **Do.J.** utilized were opinion letters from law firms discussing the legality of Classic 105 to make Classic 105 appear legitimate.

The Government would further establish that in addition to contribution amounts, **TTFG** also charged 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. **TTFG** also charged employee-participants' employers a monthly fee of approximately five (5) percent of each employee-participant's contribution. **De.J.** and **TTFG's** sales agents, acting on **De.J.'s** instruction, informed employer-clients that they were responsible

for withholding administrative fees from employee-participants' paychecks and for transmitting all payment, typically in the form of checks sent via United States mail or other commercial interstate carrier, to **TTFG's** headquarters. **TTFG** pooled all the fees it collected into a single business operating account.

The Government would further establish that **De.J., Do.J., TTFG,** and **TTFG's** sales agents marketed the plan to prospective employee-participants and employer-clients as having numerous tax benefits to employer-clients and employee-participants. In particular, **De.J., Do.J.,** and **TTFG** represented that an employee-participant's taxable wages would be reduced in the amount of the contribution and administrative fee. **TTFG** further represented 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 (IRS) pursuant to the Federal Insurance Contributions Act (FICA). **SILVA** provided direction and clarification to sales agents and prospective employer-clients concerning the funding and operation of Classic 105 and how its various components should be accounted for on state and federal tax filings and payroll journal entries.

The Government would further establish that once an employer-client decided to enter into a contract with **TTFG** to provide the Classic 105 for its employees, employee-participants were required to complete a series of documents. Among the documents employee-participants were required to sign was a loan agreement. **De.J., Do.J.** and others used multiple versions of the loan agreement that stated, in relevant part, that (1) **TTFG** had generated an arrangement with a financial institution to administer a loan program for employee-participants to enter as an individual agreement between the employee-participant and a financial institution, (2) that the financial institution would lend money directly to the employee-participant, (3) that the financial



institution would offer employee-participants a chance to participate in a death benefit taken out on the employee-participants to collateralize and guarantee the loan. Some versions of the form stated that **TTFG** “has generated an arrangement with Diamond Financial to administer a loan program for you to enter . . . .”

After enrollment, some employer-clients received a letter from **De.J.** that stated, in relevant part, that “[t]he loans established by the employees as a result of entering into the Classic 105 with The Total Financial Group, LLC. [w]ill be carried out as a long term investment and guaranteed through a death benefit. All loans will be paid in full, principle and interest, upon death of the individual. No loan will ever be called to pay until the death of the individual occurs.” **De.J.**, **Do.J.**, and **TTFG** also transmitted Monthly Billing Statements, either by mail or email, to employer-clients who participated in Classic 105. The statement contained an “Employee Breakdown,” which made clear that the only money due to be paid, and that was actually paid, to **TTFG**, was administrative fees paid by the employer-clients and employee-participants.

*Diamond Financial, LA, LLC (d/b/a Diamond FLA)*

The Government would establish, through the introduction of records from the Louisiana Secretary of State, that Diamond Financial LA, LLC (d/b/a Diamond FLA) was a Louisiana business incorporated with the Louisiana Secretary of State on about September 19, 2012. **Do.J.** incorporated Diamond FLA and was its registered agent and owner.

The Government would further establish that 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.

The Government would further establish that on or about September 14, 2015, **Do.J.** submitted paperwork with the Louisiana Secretary of State making another individual, J.L., the

registered agent of Diamond FLA. **Do.J.** remained a member of Diamond FLA. J.L. became the registered agent for Diamond FLA LLC to disguise **Do.J.**'s affiliation with Diamond FLA LLC and cause Diamond FLA LLC to appear to be unrelated to and unaffiliated with **TTFG**. **SILVA** was aware of the reason he was made to be a manager and J.L. was made to be the registered agent, and **SILVA** agreed to serve as manager.

The Government would further establish, through the introduction of documentary evidence and testimony, that employer-clients and employee-participants were regularly instructed by **De.J.**, **Do.J.**, and **TTFG** salespeople that Diamond FLA would be the lender and facilitator of loans to fund employee-participant contributions to Classic 105 and that Diamond FLA was a third-party lender unaffiliated with **TTFG**.

#### **The Conspiracy to Make False Statements**

The Government would admit, through the testimony of eyewitnesses and the introduction of documentary evidence and recorded telephone calls, that **De.J.**, **Do.J.**, **SILVA**, and others affiliated with and employed by **TTFG** knew that not a single loan funded employee-participant contributions to Classic 105, that **TTFG** procured no insurance policies related to Classic 105, and, as a result, employee-participants made no actual contributions to Classic 105. Further, no credit life policies existed to serve as collateral for the loans. In fact, the only funds ever provided by employee-participants or employer-clients to **TTFG** were administrative fees. **TTFG** deposited all money collected from employee-participants and employer-clients into **TTFG**'s single business operating account. The account had insufficient funds to reimburse the maximum amount of benefits promised to employer-clients and employee-participants, and **TTFG** carried the risk that benefits claimed could exceed the fees collected. Because of the limited scope of the benefits provided by Classic 105, its claims rate was very low, and **De.J.** represented that over



eighty (80) percent of employee-participants never submitted a claim. Consequently, **De.J.** and **Do.J.**, were able to pay the limited number of claims from the administrative fees they collected and deposited into the single business operating account and enjoy a significant remainder.

The Government would introduce documentary evidence and eyewitness testimony to establish that the attorney opinion letters **De.J.**, and **Do.J.** commissioned and used in their marketing materials contained numerous false statements. As **De.J.** and **Do.J.** well knew the law firms relied on false characterizations of how Classic 105 actually operated provided to them by **De.J.** and others to generate the opinion letters.

The Government would further establish, through the introduction of documentary evidence and testimony, that **De.J.**, **Do.J.**, **SILVA**, and others affiliated with and employed by **TTFG**, knowing that no loans existed, no “contributions” ever occurred, and no credit life policies were ever obtained, made false statements, and caused false statements to be made by and through **TTFG’s** sales agents, to prospective and current employer-clients and employee-participants of Classic 105 concerning the financial condition, solvency, and benefits provided by Classic 105. For example, 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 descriptions about the operation, financial condition, and benefits provided by Classic 105 were false.

The Government would further establish, through the introduction of documentary evidence and eyewitness testimony, the following additional false statement made in connection with the marketing and sale of Classic 105. 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 as follows:

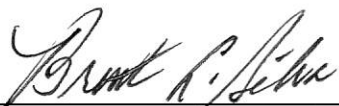
The loans were provided through a private investor and at the end of the year those loans were purchased by [T]TFG. [T]TFG will carry those account receivables until the death of the employees. There is a death benefit in place that will cover the principle and interest (interest is figured from actuary 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.

The Government would establish, through the introduction of **TTFG's** bank records, that **De.J.** and **Do.J.** paid **SILVA** a total of approximately \$254,510 between about March 2013 and 2017, as follows:

<u>YEAR</u>	<u>AMOUNT</u>
2013	\$46,510.00
2014	\$183,000.00
2016	\$25,000.00

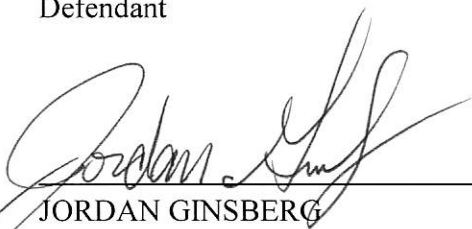
The above facts come from an investigation conducted by, and would be proven at trial by credible testimony from, Special Agents from the Internal Revenue Service – Criminal Investigation, Federal Bureau of Investigation, and United States Department of Labor – Office of Inspector General and Employment Benefits Security Administration, employee-participants and employer-clients enrolled in the Classic 105 program, business records from **TTFG**, representatives of numerous financial and retail institutions, including Chase Bank and Capital One, business records from **TTFG**, documents and tangible exhibits in the custody of the Internal Revenue Service – Criminal Investigation and the Federal Bureau of Investigation, and the statements of the defendant, **BRENT ANTHONY SILVA**.



BRENT ANTHONY SILVA  
Defendant



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