

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

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WILLIAM W. BLEVINS
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FELONY

INDICTMENT FOR CONSPIRACY TO
DEFRAUD THE INTERNAL REVENUE SERVICE,
TO MAKE FALSE STATEMENTS AND REPRESENTATIONS
IN CONNECTION WITH A MULTIPLE EMPLOYER WELFARE
ARRANGEMENT, AND TO COMMIT WIRE FRAUD, MAKING
FALSE STATEMENTS IN CONNECTION WITH A MULTIPLE EMPLOYER
WELFARE ARRANGEMENT, WIRE FRAUD, AND NOTICE OF FORFEITURE

UNITED STATES OF AMERICA

*

CRIMINAL

19-00237

v.

*

SECTION:

SECT. D MAG. 5

JOSEPH ANTHONY BORINO

*

VIOLATIONS: 18 U.S.C. § 2

18 U.S.C. § 371

*

18 U.S.C. § 1343

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29 U.S.C. § 1149

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The Grand Jury charges that:

COUNT 1

(18 U.S.C. § 371 – Conspiracy to Defraud the IRS, and Commit Wire Fraud)

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

Relevant Individuals and Entity

[Handwritten signature]

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1. The Total Financial Group, Inc. (TTFG) was a Louisiana business incorporated with the Louisiana Secretary of State on about January 6, 2005. Most recently, TTFG was located at 406 N. Florida Street, Covington, Louisiana, within the Eastern District of Louisiana.

2. Denis John Joachim (“Denis Joachim”) and Donna Kennedy Joachim (“Donna Joachim”) were residents of the Eastern District of Louisiana. Denis Joachim incorporated, owned, operated, and managed TTFG. Donna Joachim owned and served as the Chief Operating Officer of TTFG.

3. Brent Anthony Silva was a resident of the Eastern District of Louisiana was a certified public accountant employed by the Joachims at TTFG from about 2013 through about January 2017. Silva performed numerous functions at TTFG, including preparing TTFG’s federal and state income tax returns. 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-relating questions about Classic 105.

4. **JOSEPH ANTHONY BORINO (“BORINO”)**, a resident of the Southern District of Texas, was the National Executive Marketing Director for TTFG who marketed TTFG’s health care benefit programs, “Classic 105 Program” (Classic 105), to prospective employer-clients. **BORINO** represented that he was Denis Joachim’s “right hand man” in the operation of TTFG. In his capacity as TTFG’s National Executive Marketing Director, **BORINO** supervised, trained, and instructed TTFG’s regional sales personnel.

Classic 105

5. TTFG marketed a product called Classic 105, which purported to be a Medical Reimbursement Account (MRA) that 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.

6. Classic 105 plans were established or maintained by employer-clients of TTFG for the purpose of providing medical benefits to their employees and their beneficiaries 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 was also a health care benefit program as defined in Title 18, United States Code, Section 24.

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

8. The Internal Revenue Code, Title 26, United States Code, required employers to withhold Federal Insurance Contribution Act (FICA) taxes from employees' gross pay. FICA taxes represented Social Security and Medicare taxes.

9. The Internal Revenue Service (IRS), an agency of the United States Department of Treasury, was responsible for administering the internal revenue laws of the United States.

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

11. **BORINO**, Denis Joachim, Donna Joachim, and TTFG sales agents marketed Classic 105 to prospective employer-clients as a supplemental group health benefits plan for their employees, which employer-clients could adopt for their employees. 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.

12. TTFG's sales agents were required to undergo training developed largely by Denis Joachim and participate in regular calls with **BORINO** and other TTFG employees. The trainings and calls focused on approved methods for marketing Classic 105 and frequently concerned matters related to federal tax laws. Denis Joachim provided marketing materials to TTFG's sales agents and required sales agents to present the materials to prospective employer-clients unedited.

13. When marketing Classic 105, TTFG sales agents 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.

14. 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.

15. TTFG's sales agents informed prospective employer-clients that employee-participants would never have to make out-of-pocket payments to repay the loan. Instead, 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).

16. 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's sales

agents 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).

17. 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" because their reduced taxable wages would offset the amount of employee-participants' required administration fee. Those marketing materials further represented that employer-clients benefitted financially from participating in Classic 105 because the employer would only pay a five (5) percent fee to TTFG instead of the 7.65 percent fee it was required to pay to the IRS for FICA taxes.

18. TTFG's marketing materials 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.

19. In addition to contribution amounts, through its administration of the Classic 105 Program, 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.

20. TTFG also charged employer-clients a monthly fee of approximately five (5) percent of each employee-participant's contribution.

21. Each employer-client was responsible for withholding the fee amount from employee-participants' pay and for transmitting funds (*i.e.*, the employee-participants' administrative fees plus the fee paid by the employer-client), typically in the form of a monthly check mailed to TTFG's headquarters, within the Eastern District of Louisiana.

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

23. 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.

24. To receive reimbursement, an employee-participant was required to submit a claim within sixty (60) days from the date the medical service was provided.

25. 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.

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

27. 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.

28. Despite representations to the contrary, TTFG never obtained third-party lenders or insurance policies to fund the loans. As early as September 2014, **BORINO**, Denis Joachim, and Silva all participated in email exchanges that discussed that there were no third-party lenders or insurance policies to fund the loans.

29. The reclassification of taxable wages resulted in employer-clients underpaying FICA taxes due to the IRS and employee-participants underpaying personal income taxes.

30. Employer-Client 1, a Springfield, Missouri-based corporation, enrolled in Classic 105 in about December 2014, and participated until about November 2016. Approximately 18 of its employees participated in Classic 105. In total, Employer-Client 1 paid approximately \$78,194

in fees to TTFG for the participation in Classic 105 of Employer-Client 2 and its employee-participants.

31. Employee-Participant 1 was an employee of Employer-Client 1. Employee-Participant 1 enrolled in Classic 105 in about December 2014, and participated until about March 2016. In total, Employee-Participant 1 paid approximately \$3,293.75 in fees to TTFG during the time Employee-Participant 1 participated in Classic 105. Employee-Participant 1 ceased working at Employer-Client 1 in about March 2016. As a result of Employee-Participant 1's participation in Classic 105, namely the reclassification of wages, Employee-Participant 1 was denied unemployment benefits after Employee-Participant 1's departure from Employer-Client 1.

32. Employer-Client 2, a New York, New York-based corporation, enrolled in Classic 105 in about July 2016, and participated until about December 2016. Approximately 237 of its employees participated in Classic 105. In total, Employer-Client 2 paid approximately \$437,933 in fees to TTFG for the participation in Classic 105 of Employer-Client 2 and its employee-participants.

33. The funds collected from employer-clients and employee-participants were insufficient to reimburse the maximum amount of benefits promised to employer-clients and employee-participants.

B. THE CONSPIRACY:

34. Beginning at a time unknown, but not later than August 2012, and continuing until on or about January 10, 2017, in the Eastern District of Louisiana and elsewhere, the Defendant, **JOSEPH ANTHONY BORINO**, and others known and unknown to the Grand Jury, willfully and knowingly did combine, conspire, confederate, and agree:

a. To defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the IRS in the ascertainment, computation, assessment, and collection of the revenue: to wit, FICA taxes and federal income taxes.

b. 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. § 1001 *et seq.*, 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 employees, employers, and any State, and representatives and agents of such persons and State concerning the financial condition and solvency of, and benefits provided by Classic 105, in violation of Title 29, United States Code, Sections 1131(b) and 1149;

c. To knowingly execute and attempt to execute a scheme and artifice to defraud and to obtain money, funds, and property, in the form of fees paid from employer-clients and employee-participants, by means of false and fraudulent pretenses, representations and promises and did transmit and cause to be transmitted in interstate commerce certain writings, signs, signals and sounds by means of wire communications from the Eastern District of Louisiana, in violation of Title 18, United States Code, Section 1343.

C. PURPOSE OF THE CONSPIRACY:

35. The purpose of the conspiracy was for the Defendant and his co-conspirators to convince employer-clients and employee-participants to participate in Classic 105 by making false representations about the operation of Classic 105 and the nature and legitimacy of the tax benefits associated with participating in Classic 105, to defraud the IRS, and to receive significant fees

from employer-clients and employee-participants and then divert the proceeds for the personal use and benefit of the Defendants and their co-conspirators.

D. MANNER AND MEANS:

36. The manner and means by which **JOSEPH ANTHONY BORINO** and other co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

a. The Defendant caused TTFG sales agents to falsely represent to prospective employer-clients that employee-participant contributions and fees paid by participants to a Classic 105 plan were made pre-tax and would reduce the taxable wages of participants.

b. The Defendant caused TTFG sales agents to falsely represent to employer-clients that the fee paid to TTFG could be made in lieu of the tax owed to the IRS pursuant to FICA.

c. The Defendant knew through communications with Denis Joachim, Brent Silva, and other employees at TTFG that there were no loans or collateralizing insurance policies funding employee-participants' Classic 105 contributions.

d. Despite knowing that no loans or collateralizing insurance policies existed, the Defendant caused TTFG sales agents to falsely represent to prospective employer-clients and employee-participants that 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 well knowing that no such policies were purchased.

e. Despite knowing that no loans or collateralizing insurance policies existed, the Defendant caused TTFG sales agents to falsely represent to employee-participants and employer-clients that loans covering the amount of employee-participants' contributions would be

provided by a third-party lender or that third-party lenders had already committed funds, that the loans would not appear on employee-participants' credit reports, and that employee-participants would never have to make out-of-pocket payments to repay the loans.

f. The Defendant caused payments of funds due from employer-clients and employee-participants to be made by wire transfer, wire communication, electronic check, personal check, and cashier's check.

g. The Defendant caused TTFG's employer-clients and employee-participants to file false and fraudulent corporate and individual tax returns, which understated the amount of taxable wages.

h. The Defendant performed acts and made statements to hide and conceal, and cause to be hidden and concealed, the purposes of, and the acts done in furtherance of, said conspiracy.

E. OVERT ACTS:

37. In furtherance of the conspiracy and to achieve the objects thereof, the defendant, **JOSEPH ANTHONY BORINO**, and others known and unknown to the Grand Jury, committed and caused to be committed the following overt acts, among others, in the Eastern District of Louisiana and elsewhere:

38. **BORINO** caused marketing materials to be provided to Employer-Client 1 that he knew contained numerous false and fraudulent statements and representations about the operation and organization of Classic 105, including false statements and representations concerning the financial condition and solvency of, and benefits provided by, Classic 105.

39. **BORINO** caused marketing materials to be provided to Employer-Client 2 that he knew contained numerous false and fraudulent statements and representations about the operation

and organization of Classic 105, including false statements and representations concerning the financial condition and solvency of, and benefits provided by, Classic 105.

40. On or about May 22, 2015, **BORINO** knowingly answered a question posed by a TTFG sales agent that originated with a Classic 105 employer-customer falsely by representing the existence of loans funding contributions at issue in Classic 105: “All loans are the responsibility of the employee with the understanding that TTFG pays for a collateral instrument with the fees paid by employee.”

41. On or about November 2, 2015, **BORINO** caused Employer-Client 1 to file a Quarter Three, Tax Year 2015 Form 941, in which it reported Taxable Social Security wages of \$41,516.48 and Taxable Medicare Wages and Tips of \$41,516.48.

42. On or about February 1, 2016, **BORINO** caused Employer-Client 1 to file a Quarter Four, Tax Year 2015 Form 941, in which it reported Taxable Social Security wages of \$37,908.49 and Taxable Medicare Wages and Tips of \$37,908.40.

43. On or about February 3, 2016, **BORINO** caused Employee-Participant 1 to file a 2015 Form 1040, in which she reported wages of \$37,240.

44. On or about March 23, 2016, **BORINO** knowingly made a false statement to Denis Joachim regarding the collateralization of loans at issue in Classic 105 and caused this false statement to be made to an employer-client.

45. On or about March 30, 2016, **BORINO** knowingly made a false statement to a TTFG sales agent about the collateralization of loans at issue in Classic 105 and caused this statement to be made to an employer-client.

46. On or about June 30, 2016, **BORINO** forwarded to a TTFG sales agent a false statement made by Denis Joachim to an employer-client regarding the funding mechanism for the Classic 105 loan.

47. On or about August 30, 2016, **BORINO** knowingly caused a TTFG sales agent to falsely answer a question regarding the collateralization of loans at issue in Classic 105 and caused this statement to be made to an employer-client.

48. On or about August 30, 2016, **BORINO** knowingly caused a TTFG sales agent to falsely answer a question regarding an investigation initiated by the United States Department of Labor into TTFG.

49. On or about October 27, 2016, **BORINO** knowingly caused Employer-Client 2 to file a Quarter Three, Tax Year 2016 Form 941, in which it reported Taxable Social Security wages of \$3,989,959.14 and Taxable Medicare Wages and Tips of \$5,369,133.24.

50. On or about December 6, 2016, **BORINO** sent an email to Denis Joachim in response to an inquiry from a TTFG sales agent regarding the loan component of Classic 105 and stated, "Denis, Need your input. Telling them the loans are collateralized without proof is becoming a bigger problem. I tell them it's proprietary and they want more. Any suggestions?"

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

COUNTS 2 – 6

(29 U.S.C. § 1149 – False Statements and Representations
in Connection With a Multiple Employer Welfare Arrangement)

A. AT ALL TIMES MATERIAL HEREIN:

The allegations of Parts A, D, and E of Count 1 are hereby realleged and incorporated herein in their entirety by reference.

B. THE OFFENSES:

On or about the following dates, in the Eastern District of Louisiana and elsewhere, the defendant, **JOSEPH ANTHONY BORINO**, did, 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. § 1001 *et seq.*, make and cause to be made false statements and false representations of fact, knowing them to be false, in connection with the marketing and sale of such arrangement, to employees, employers, and any State, and representatives and agents of such persons and State concerning the financial condition and solvency of and benefits provided by Classic 105, as follows:

Count	Date	False Statement
2	5/22/2015	Stating in an email sent to a TTFG sales agent "Each loan is an asset. No matter who lends the money it is collateralized [sic] for everyone's benefit. Exactly how, is a different procedure depending on lender. Understand no lenders provide funds without a form of collateral since there are no credit checks or credit pulls. All loans are the responsibility of the employee with the understanding that TTFG pays for a collateral instrument with the fees paid by employee. Legal term is consideration. TTFG may decide to collateralized [sic] the debt themselves. That I know to be proprietary," and causing such statement and representation to be made to an employer-client.
3	3/23/2016	Forwarding an email from a TTFG sales agent to Denis Joachim stating "I think if we change the verbiage in the loan agreement to say that it will be collateralized then that will take care of it because whether it's you collateralizing it or credit life it's still is collateralized," and causing such statement and representation to be made to an employer-client.
4	3/30/2016	Stating in an email to a TTFG sales agent that "Loans are secured at 30% higher than principle to allow for these situations of terminations plus any excess funds are secured into a fund as a fail safe. Never is a loan forgiven but just life your mortgage company may sell off your loan we have lenders that do that and many other proprietary transactions. We have many lenders and each has their unique way of handling loans," and causing such statement and representation to be made to an employer-client.

Count	Date	False Statement
5	6/30/2016	Forwarding an email from Denis Joachim stating that "I was asked to send you the information regarding the insurance on the loans with the Classic 105. We will be using a TOLI (Trust Owned Life Insurance) to guarantee the loan. Contributions will be deposited monthly and carried in the trust until the death of the insured, then a death benefit will be issued to cover the complete debt," and causing such statement and representation to be sent to a TTFG employee and to be made to a prospective employer-client.
6	8/30/2016	Causing a TTFG sales agent to respond "No" in an email to an inquiry relayed through a TTFG sales agent inquiring "Even though TTFG gives a guarantee on the loan does the company that actually gives the collateral on the loan (Credit Life, BOLI etc) give the employee a certificate of some kind that shows that the loan is collateralized?" and causing such statement and representation to be made to an employer-client.

All in violation of Title 29, United States Code, Sections 1131(b) and 1149.

COUNTS 7-8
(18 U.S.C. § 1343 – Wire Fraud)

A. AT ALL TIMES MATERIAL HEREIN:

The allegations of Part A, D, and E of Count 1 are hereby realleged and incorporated herein in their entirety by reference.

B. THE SCHEME:

1. Beginning at a time unknown, but not later than in about August 2012, and continuing through on or about January 10, 2017, in the Eastern District of Louisiana and elsewhere, **JOSEPH ANTHONY BORINO**, did knowingly devise and intend to devise a scheme and artifice to defraud and obtain money and property, in the form of fees paid, from employee-participants and employer-clients by means of false and fraudulent pretenses, representations, and promises.

2. On or about the dates listed below, in the Eastern District of Louisiana and elsewhere, **JOSEPH ANTHONY BORINO**, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud and to obtain money, funds and property by means of false and fraudulent pretenses, representations and promises, did knowingly transmit and cause to be transmitted in interstate commerce certain writings, signs, signals and sounds by means of wire communications from the Eastern District of Louisiana, namely depositing monthly fees paid for the participation of employee-participants and employer-clients in Classic 105:

Count	Name of Victim	Date	Check Number	Amount of Check
7	Employer-Client 1	11/07/16	6752	\$1,073.80
8	Employer-Client 2	12/22/16	39411	\$73,396.22

All in violation of Title 18, United States Code, Sections 1343 and 2.

NOTICE OF FORFEITURE

1. The allegations of Count 1 through 8 are incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States.

2. As a result of the offenses alleged in Counts 1 through 8, the defendant, **JOSEPH ANTHONY BORINO**, shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from any gross proceeds traceable to the commission of said offenses.

3. As a result of the offenses alleged in Counts 1 and 7 through 8, the defendant, **JOSEPH ANTHONY BORINO**, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property real or personal which constitutes or is derived from proceeds traceable to said offenses.

4. If any of the above-described property, as a result of any act or omission of the defendant:

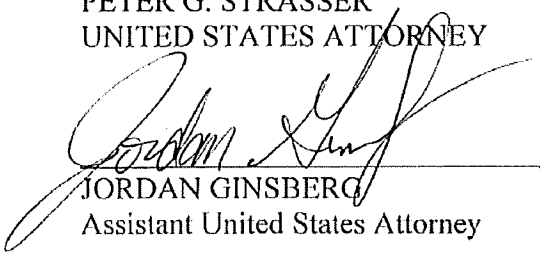
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;


the United States shall seek a money judgment and, pursuant to Title 21, United States Code, Section 853(p), forfeiture of any other property of the defendant up to the value of said property.

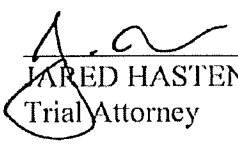
A TRUE BILL:

FOREPERSON

PETER G. STRASSER
UNITED STATES ATTORNEY


JORDAN GINSBERG
Assistant United States Attorney


MARIA M. CARBONI
Assistant United States Attorney


JARED HASTEN
Trial Attorney

New Orleans, Louisiana
November 21, 2019