

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO. 19-237

v. * SECTION: "D"

JOSEPH ANTHONY BORINO *

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* * *

FACTUAL BASIS

The defendant, **JOSEPHY ANTHONY BORINO** ("**BORINO**"), has agreed to plead guilty as charged to the Superseding Bill of Information now pending against him, charging **BORINO** with misprision of a felony, in violation of Title 18, United States Code, Section 4. The Government and the **DEFENDANT** do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crimes 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 Superseding Bill of Information now pending against the **DEFENDANT**.

Background

TTFG

The Government would show that **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. Denis Joachim incorporated, owned, operated, managed, and served as the Chief Executive Officer (“CEO”) of TTFG. Donna Joachim owned and served as the Chief Operating Officer of TTFG. **BORINO** resided in the Houston, Texas area, and served as the National Executive Marketing Director for TTFG. **BORINO** began his employment in about 2012. Additionally, TTFG had approximately thirteen (13) employees and at least fifty-six (56) independent contractors who acted as sales agents for TTFG. R.R., TTFG’s National Marketing Director, had primary responsibility for supervising and training TTFG’s sales agents. As TTFG’s National Executive Marketing Director, **BORINO** primarily handled and resolved issues or problems agents, prospective clients, and enrolled clients encountered.

The Government would further establish that from about 2012 through October 2014, TTFG maintained a business operating account at JPMorgan Chase Bank N.A., bearing account number [REDACTED]. In about August 2014, TTFG moved its operating account to Capital One Bank, N.A., into an account bearing number [REDACTED].

The Government would further establish that Denis Joachim created, and **BORINO** and TTFG marketed, a product called the “Classic 105 Program” (“Classic 105”). Classic 105 purported to be a Medical Reimbursement Account (“MRA”), which provided for the reimbursement of qualifying medical expenditures to participating employees (employee-participants) of qualifying medical expenses not paid for under the employer’s (employer-client’s) primary insurance plan.

Classic 105: As Marketed

The Government would further establish, through the introduction of documentary evidence and eyewitness testimony, that **BORINO**, Denis Joachim, Donna Joachim, and TTFG marketed Classic 105 to employer-clients as a combination of an MRA plan with employee-

participant contributions offset by a loan arrangement. TTFG contracted with regional sales agents to market Classic 105 to prospective employer-clients. TTFG's sales agents were required to undergo training developed largely by Denis Joachim and others to participate in regular calls with **BORINO**, Denis Joachim, 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, R.R., **BORINO**, and other senior executives at TTFG provided marketing materials to TTFG's sales agents and required sales agents to present the materials to prospective employer-clients unedited.

The Government would further establish that TTFG and its employees, including **BORINO**, marketed Classic 105 to prospective employer-clients as a supplemental group health benefit 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.

The Government would further establish that Classic 105 provided for limited reimbursement of specific, restrictive expenses. For example, Classic 105 offered reimbursement for seventy-five percent (75%) 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. Classic 105 enjoyed

a small reimbursement claims rate. Denis Joachim represented that over eighty (80) percent of employee-participants never submitted a claim.

The Government would further establish that, according to TTFG'S marketing materials, participants contributed to Classic 105 based on their family composition. Participants in the individual plan purportedly contributed approximately \$1,000 per month to Classic 105. Participants in the family plan purportedly contributed approximately \$1,600 per month to Classic 105. TTFG claimed that contribution amounts would be held in trust in a contribution account TTFG set up for each individual participant and that when a participant made a claim for reimbursement, their reimbursement came from their personal contribution account. TTFG sent annual statements to employee-customers reflecting the amount they had purportedly contributed to their Classic 105 account and the amount they had sought and received as reimbursement for covered expenses.

The Government would further establish that 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 either provided or facilitated by a third-party lender, most often Diamond Financial LLC (a/k/a Diamond, FLA, LLC) (Diamond FLA).¹ TTFG told 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 claimed that contribution amounts would be held in trust in a contribution account TTFG

¹ Donna Joachim incorporated Diamond FLA in about September 2012. In about 2014 and 2015, Donna Joachim filed and caused to be filed various paperwork with the Louisiana Secretary of State listing other people as being in charge of and owning Diamond FLA to make Diamond FLA appear unrelated to and unaffiliated with 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. **BORINO** told prospective customers, and caused his subordinates to tell prospective customers, that TTFG would arrange for the lender to fund the customer's account, which was held at TTFG's home office, directly, to avoid having to endure the excess paperwork inherent in multiple transactions (*i.e.*, a contribution flowing from the employee to the employer to TTFG and a loan flowing from a lender to the employee).

The Government would further establish that, 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. TTFG also charged employer-clients a monthly fee of approximately five percent (5%) of each employee-participant's purported contribution. TTFG and its employees and agents, acting at the direction of Denis Joachim, Donna Joachim, and **BORINO**, 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.

The Government would further establish that 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 by means of United States mail or other commercial interstate carrier for the purpose of executing the scheme and artifice to defraud described above. TTFG's depositing of the checks reflecting the monthly fees paid for the participation of employee-participants and employer-

clients in Classic 105 caused wire communications to travel from the Eastern District of Louisiana to locations outside the State of Louisiana.

The Government would further establish that TTFG's marketing materials stated that there would be "no net cost" to employee-participants in Classic 105, that most employee-participants would "receive an increase in their net take home pay" because their reduced taxable wages would offset the amount of employee-participants' required administration fees, and that employer-clients benefitted financially from participating in Classic 105 because the employer would only pay a five percent (5%) fee to TTFG instead of the 7.65 percent fee it was required to pay to the IRS for their portion of FICA taxes.

The Government would further establish that TTFG and its executives solicited, and obtained, opinion documents purporting to discuss the legitimacy and legality of Classic 105 to use the documents as marketing materials. For example, in 2012, Denis Joachim obtained an opinion letter from a law firm, which TTFG then circulated to prospective customers. In about 2016, Denis Joachim and others obtained a second opinion letter from a different law firm that focused on the viability and legitimacy of the loan component of Classic 105. **BORINO** was the primary point of contact with representatives of the second law firm. As Denis Joachim and others well knew, however, the law firms relied on false characterizations of how Classic 105 actually operated to generate the opinion letters.

TTFG's Wire Fraud

The Government would establish, through the testimony of eyewitnesses and the introduction of documentary evidence and recorded telephone calls that, notwithstanding the representations made to prospective employer-clients and employee-participants described above about how Classic 105 operated, no individual, entity, or financial institution provided funding in

the form of “loans” for Classic 105. Consequently, the loan component for employee-participants never occurred. Similarly, TTFG did not obtain or purchase any collateralizing insurance policies secured on the life of employee-participants. Further, no employee-participants actually contributed to Classic 105. The only money tendered to TTFG by employer-clients and employee-participants were fees. Denis Joachim, Donna Joachim, TTFG, and others affiliated with and employed by TTFG knew that not a single loan funded Classic 105, that TTFG procured no collateralizing life insurance policies related to Classic 105, and that participants made no actual contributions to Classic 105. As a result, employee-participants and employer-clients were defrauded into enrolling in, and paying fees for, the Classic 105 program by means of fraudulent pretenses, representations, and promises.

The Government would further establish that Denis Joachim pooled all the money TTFG collected from employee-participants and employer-clients—namely, the fees paid—into a single business operating account, first at Chase [REDACTED], and then at CapOne [REDACTED]. TTFG paid the claims from the fees they collected and deposited into the single business operating account, first at Chase [REDACTED], and then at CapOne [REDACTED].

The Government would further establish that, based on the false representations described above, over 350 employers and 4,400 employees (“participants”) nationwide were enrolled in TTFG’s Classic 105 program. The transmission of these fees in interstate commerce constituted wire fraud, in violation of Title 18, United States Code, Section 1343. The Government would further establish that TTFG’s enrollment of employer-clients and employee-participants resulted in employer-clients significantly underreporting employee-participant wages and, therefore, underreporting and underpaying FICA taxes. Additionally, enrollment in Classic 105 resulted in employee-participants collectively underreporting and underpaying personal federal income taxes

and federal unemployment taxes due to the IRS, as well as state unemployment taxes. This exposed participants and employers to potential adverse financial consequences, including not only unpaid taxes, fees, and penalties, but also ineligibility from certain government programs, including unemployment payments, and reduced Social Security payments.

The Government would further establish that Denis Joachim used the remainder of its proceeds, after the payment of claims, to pay overhead, pay **BORINO's** salary, and make significant personal payments to Denis Joachim and Donna Joachim.

BORINO'S Misprision of Wire Fraud

The Government would prove, through the introduction of testimony and documentary evidence that **BORINO** had knowledge of the actual commission of events that constituted a felony cognizable by a court of the United States, namely, wire fraud. The Government would further establish that **BORINO** did not as soon as possible make known that information and did, further, attempt to conceal the information. In particular, in September 2014, **BORINO** was told, "TTFG has not made any deals with any banks in any state" and also had "not solicited nor [sic] received any pooling of funds from a group of individuals." In the subsequent months, including on or about November 2, 2014, when subordinates asked **BORINO** specific questions about the loan component and passed along concerns that Classic 105 was "a scam and likely an illegal tax dodge," **BORINO** failed to disclose what he had been told: that there were no entities providing loans.

Similarly, in November 2014, Denis Joachim forwarded **BORINO** an email that stated, in relevant part, that "loans and credit life or who life policies are not part of the Classic 105 program." Thereafter, on multiple occasions **BORINO** told prospective enrollees that TTFG had already arranged for institutions to fund the loan component. For example, in a call in December

2014, **BORINO** told a prospective enrollee that TTFG had “investors,” “Wall Street banks,” “community banks,” and a “tremendous amount of a network [sic] of investing vehicles” funding the loan component. Similarly, in a call with a prospective enrollee on December 10, 2015, **BORINO** stated that TTFG had “third-party” entities providing the loans, that the lenders are FDIC-insured and properly licensed, that TTFG only used a “sophisticated network,” including “large banks,” “insurance companies,” and “Wall Street banks” for its loans and secured vehicles, that the insurance companies they use to obtain collateralized instruments are “all part of the legal reserve.”

Further, **BORINO** was told in September 2016 that TTFG’s bank program was “not ready yet.” Thereafter, including on or about October 18, 2016, Borino persisted in telling subordinates and prospective customers that the loan funds were FDIC insured.


The above facts 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, participants and employers 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**, and documents and tangible exhibits in the custody of federal law enforcement authorities.

Limited Nature of Factual Basis

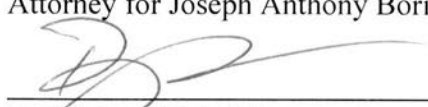
This proffer of evidence is not intended to constitute a complete statement of all facts known by the defendant, **JOSEPH ANTHONY BORINO**, and/or the Government. Rather, it is a minimum statement of facts intended to prove the necessary factual predicate for their guilty pleas. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for the pleas of guilty to the charged offense by **JOSEPH ANTHONY BORINO**.



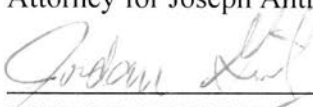
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