

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) CR. NO. 3:13cr105-WKW
)
v.)
)
TERRIL YARHAM)

PLEA AGREEMENT

DEFENSE COUNSEL: STEPHEN P. GANTER

ASSISTANT U.S. ATTORNEY: DONALD G. VALESKA

COUNT AND STATUTES CHARGED:

Count 1 18 U.S.C. § 1341 – Mail Fraud
 18 U.S.C. § 1343 – Wire Fraud
 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud & Wire Fraud

Counts 2-3 18 U.S.C. § 1341 – Mail Fraud

COUNT PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1 18 U.S.C. § 1341- Mail Fraud

 18 U.S.C. 1343 – Wire Fraud

 18 U.S.C. § 1349 – Conspiracy to Commit Mail and Wire Fraud

PENALTIES BY COUNT - MAXIMUM PENALTY:

Count 1 18 U.S.C. § 1341, 1343, 1349:
 A term of imprisonment which may not be more than 20 years; a fine not to exceed \$250,000.00, or both a fine and imprisonment; a period of supervised release not to exceed five years; an assessment fee of \$100.00; and a contribution to VWPA

ELEMENTS OF THE OFFENSE(S):

Count 1 **18 U.S.C. § 1341 Mail Fraud**

1. Defendant knowingly devised or participated in a scheme to defraud, or for obtaining money or property by means of false pretenses, representations or promises;
2. The false pretenses, representations or promises related to a material fact;
3. The defendant did so willfully and with an intent to defraud; and⁷
4. Defendant used the United States Postal Service by mailing or by causing to be mailed some matter or thing or taking or receiving such a matter or thing from the mail for the purpose of executing the scheme to defraud.

18 U.S.C. 1343 – Wire Fraud

1. Defendant knowingly devised or participated in a scheme to defraud, or for obtaining money or property by means of false pretenses, representations, or promises;
2. The false pretenses, representations, or promises related to a material fact;
3. The defendant did so willfully and with an intent to defraud: and
4. Defendant transmitted or caused to be transmitted by wire in interstate commerce some communication for the purpose of executing the scheme to defraud.

18 U.S.C. § 1349 – Conspiracy to Commit Mail and Wire Fraud

1. Two or more persons in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment;
2. The defendant, knowing the unlawful purpose of the plan, willfully joined in it; and
3. The object of the unlawful plan was to commit wire or mail fraud, as charged.

Donald G. Valeska, Assistant United States Attorney, and Stephen P. Ganter, Esq., attorney for the defendant, pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended, have, with the authorization of the undersigned defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Indictment herein and a Plea Agreement has been reached by said parties. The parties understand that, if the terms of the Plea Agreement are not accepted by the Court, the defendant will be allowed to withdraw the defendant's plea of guilty and proceed to trial. If the Court accepts this agreement, however, and defendant thereafter breaches this agreement, his guilty plea may not be withdrawn.

GOVERNMENT'S PROVISIONS

1. Upon entering a plea of guilty by the defendant to the offenses charged in Count 1 of the Indictment, the attorney for the Government will do the following:

a. The Government will agree that a two-level reduction in the applicable offense level pursuant to U.S.S.G. § 3E1.1(a) for the defendant's acceptance of responsibility is appropriate, so long as the defendant does not obstruct justice or otherwise fail to accept responsibility for the offense conduct. Should the Government find the defendant assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, and if the defendant otherwise qualifies, the Government will move at sentencing for a further reduction of one level, pursuant to U.S.S.G. § 3E1.1(b). Determination of whether the defendant met his obligation to qualify for the reduction pursuant to U.S.S.G. § 3E1.1 is at the sole discretion of the Government.

2. The Government reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offense and the defendant's background.

3. The Government agrees that it will prosecute no additional offenses committed by the Defendant.

4. The parties have reached no agreement on any other Guidelines issues.

5. Upon acceptance of the Plea Agreement by the Court and after Sentencing, the Government agrees to dismiss Counts 2 and 3.

6. The United States agrees that the amount of loss did not exceed \$120,000.00. U.S.S.G. §2B1.1(b)(1)(F).

DEFENDANT'S PROVISIONS

1. The defendant agrees to the following:
 - a. To plead guilty to Count 1 of the Indictment.
 - b. Not to commit any other federal, state, or local offense while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering, or facilitation of any other criminal activity. Determination of whether defendant's conduct is a violation of this provision is at the complete discretion of the Government.
 - c. The defendant recognizes that the facts used to determine the defendant's Guidelines offense level and sentence will be found by the Court at sentencing by a preponderance of the evidence and that the Court may consider any reliable evidence, including hearsay.

d. The Defendant reserves the right to argue for a downward variance at sentencing.

FACTUAL BASIS

COUNT

1

(Conspiracy to Commit Mail Fraud and Wire Fraud)

INTRODUCTION

1. At all times material to this Indictment:

(a) Court Mediation Services (CMS) was owned and operated by BRADFORD LAMAR DALEY.

(b) Starting on or about September 27, 2005, CMS conducted business from Post Office Box 1609, Phenix City, Alabama. Sometime in 2009, CMS moved its operations to Columbus, Georgia.

(c) CMS maintained a bank account in the name of Bradford L. Daley, DBA Court Mediation Services at Phenix-Girard Bank in Phenix City, Alabama.

(d) TERRIL YARHAM was a broker for CMS, and he was also identified as the Marketing Manager for CMS, and representative for BRADFORD LAMAR DALEY.

(e) Integrity Debt Option Group (IDOG) was a business operated by TERRIL YARHAM to solicit consumers to sign up for CMS's services.

2. Beginning sometime in 2007 and continuing to on or about February 2011, in Russell County, in the Middle District of Alabama, and elsewhere, defendants,

BRADFORD LAMAR DALEY, and
TERRIL YARHAM,

did conspire with each other and with others known and unknown to the grand jury to

commit offenses, namely, to devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises and to execute that scheme and artifice through the use of the mails and interstate wire communications, contrary to Title 18, United States Code, Sections 1341 and 1343.

CONSPIRACY AND ITS OBJECTS

3. It was the purpose and object of the unlawful conspiracy for

BRADFORD LAMAR DALEY, and
TERRIL YARHAM,

to obtain monies from persons who they enrolled in a fraudulent Debt Elimination Program for the personal use, enrichment, and benefit of the Defendants, and others known and unknown to the grand jury.

MANNER AND MEANS

4. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

(a) BRADFORD LAMAR DALEY and TERRIL YARHAM used brokers and the internet to solicit individuals to enroll into a Debt Elimination Program based on the false representation that this program would eliminate these individuals' consumer debts, make collection agencies stop calling them, would go to court for them if sued and, ultimately, assume the individuals' consumer debts;

(b) BRADFORD LAMAR DALEY and TERRIL YARHAM would represent to individuals that for a payment of between \$2,500 to \$5,000 BRADFORD LAMAR DALEY and/or CMS would assume the individuals' unsecured debt, including

credit cards, signature loans, business loans, student loans, and personal loans;

(c) BRADFORD LAMAR DALEY and TERRIL YARHAM would provide individuals with Purchase Agreements and Notices of Assignment of Debt, along with other documents, to support their false claims of assuming the consumers' debt;

(d) BRADFORD LAMAR DALEY and TERRIL YARHAM would instruct individuals who were not behind on their debt payments to write a check to CMS for their credit card companies' minimum payment, plus \$43.00 per account. Individuals who were behind on their debt payments were told to write a check to CMS for 2% of the debt plus \$43.00 per account;

(e) BRADFORD LAMAR DALEY and TERRIL YARHAM would then cause CMS to write a check to the lender with an endorsement on the back of the check which purported to change the debt's minimal monthly payment to \$10 per month and change the interest rate of the debt to zero. BRADFORD LAMAR DALEY and TERRIL YARHAM would tell individuals that once the lender cashed the payment check the lender accepted the new terms and the individuals' consumer debts would be assigned to CMS and/or BRADLEY LAMAR DALEY;

(f) BRADFORD LAMAR DALEY and TERRIL YARHAM would also represent to individuals that once the lender cashed the check and accepted the new terms, but then acted in a manner inconsistent with the new terms, financial penalties would accrue in favor of the individuals and against the creditors that could be used to offset the debt;

(g) As part of the CMS process, BRADFORD LAMAR DALEY and TERRIL YARHAM changed the addresses of the consumer to an address controlled

by CMS and BRADFORD LAMAR DALEY in Phenix City, Alabama; and

(h) BRADFORD LAMAR DALEY and TERRIL YARHAM used the United States Mails to send and receive complete Enrollment Forms and Enrollment Fees, Purchase Agreements and Notice of Assignment of Debt, and other documents to further their scheme;

All in violation of Title 18, United States Code, Section 1349.

OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

5. In furtherance of the conspiracy and to effect the objects thereof, Defendants

BRADFORD LAMAR DALEY and
TERRIL YARHAM

committed and caused to be committed at least one of the following overt acts in the Middle District of Alabama and elsewhere:

(a) On or about May 28, 2008, in Russell County, Alabama and elsewhere BRADFORD LAMAR DALEY and TERRIL YARHAM caused a Purchase Agreement to be delivered by mail and private and commercial carrier from B.P., in Clarksville, Tennessee, to CMS in Phenix City, Alabama;

(b) On or about September 30, 2008, in Russell County, Alabama, and elsewhere BRADFORD LAMAR DALEY and TERRIL YARHAM caused a Purchase Agreement to be delivered by mail and private and commercial carrier from C.P. in Clarksville, Tennessee, to CMS in Phenix City, Alabama;

(c) On or about July 29, 2008, in Russell County, Alabama, and elsewhere BRADFORD LAMAR DALEY and TERRIL YARHAM caused a CMS Check #19349 for \$49.00 annotated B.P. account #8917 to be delivered by mail and private and commercial carrier from CMS to Capitol One Bank;

(d) On or about September 10, 2008, in Russell County, Alabama, and elsewhere BRADFORD LAMAR DALEY and TERRIL YARHAM caused a CMS Check #23704 for \$10.00 annotated account #8917 to be delivered by mail and private and commercial carrier from CMS to Capital One Bank;

(e) On or about August 14, 2008, in Russell County, Alabama, and elsewhere BRADFORD LAMAR DALEY and TERRIL YARHAM caused a Purchase Agreement from W.B. & M.B. in Buford, Georgia, to be delivered by mail and private and commercial carrier to CMS in Phenix City, Alabama;

(f) On or about November 3, 2008, in Russell County, Alabama, and elsewhere BRADFORD LAMAR DALEY and TERRIL YARHAM caused a Purchase Agreement from M.S., in Athens, Alabama to be delivered by mail and private and commercial carrier to CMS in Phenix City, Alabama.

All in violation of Title 18, United States Code, Section 1349.

SENTENCING GUIDELINES AND RECOMMENDATIONS

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence and the sentencing guidelines, if any, applicable to defendant's case will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant waives any constitutional challenge to the sentencing guidelines, waives indictment and trial by jury on all findings for sentencing, and stipulates that the Court may make all findings for sentencing and may make those findings

by a preponderance of the evidence based upon any reliable evidence, including hearsay. Defendant understands that the Court is required to consider any applicable sentencing guidelines but may depart from these guidelines under some circumstances and may vary from these Guidelines in any case. Defendant acknowledges that defendant and defendant's attorneys have discussed the sentencing guidelines and defendant understands how the guidelines are applicable to defendant's case.

18 U.S.C. § 3553(a)

The defendant acknowledges that counsel for the defendant has conferred with the defendant prior to the signing of this plea agreement and advised the defendant that the Court, at sentencing, will consider the factors set forth in 18 U.S.C. § 3553(a), and explained to the defendant each of those factors specifically including (1) the nature and circumstances of the offense and the history characteristics of the defendant; the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) the need for deterrence; (3) the need to protect the public; (4) the need to provide the defendant with needed educational or vocational training or medical care; (5) the kinds of sentences available; (6) the need to avoid unwanted sentencing disparities; and, (7) the need to provide restitution to victims.

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

1. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. Defendant further expressly waives the right to appeal the conviction and sentence on any other ground and waives the right to attack the sentence in any post-conviction proceeding. This waiver does not include the right to appeal or

collateral attack on the grounds of ineffective assistance of counsel and prosecutorial misconduct.

2. The government does not waive its right to appeal any order dismissing the Indictment, the sentence imposed in this case, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to 18 U.S.C. § 3742(b), the defendant is released from this waiver as to any issue the defendant may raise pursuant to 18 U.S.C. § 3742(a).

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

1. The defendant, before entering a plea of guilty to Count 1 as provided for herein by said Plea Agreement, advises the Court that:

a. The discussions between the attorney for the Government and the attorney for the defendant towards reaching an agreed plea in this case have taken place with the defendant's authorization and consent.

b. The defendant further understands that, pursuant to 18 U.S.C. § 3013, said \$100.00 assessment fee is to be paid by the defendant on the date of sentencing and that, if a fine is imposed by the Court at sentencing, the defendant shall meet with a member of the Financial Litigation Section of the United States Attorney's Office on the day of sentencing and complete a written personal financial statement setting forth the defendant's assets and liabilities as of the date of the offense. The defendant will make an honest, good faith effort to pay said fine as directed by the Financial Litigation Section of the United States Attorney's Office. The defendant further understands that by completing the financial statement, the defendant is representing that it is true and accurate to the best of the defendant's information, knowledge, and belief.

c. The defendant understands that the defendant has a right to be represented by an attorney at every stage of the proceedings against the defendant herein and is represented by the defendant's undersigned attorney.

d. The defendant understands that the defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right to call witnesses in the defendant's own behalf, and the right not to be compelled to incriminate the defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the defendant waives the right to a trial by jury or to a trial before the Court.

e. The defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. The defendant further understands and advises the Court that the Plea Agreement as set forth herein and the plea to be entered by the defendant as a result thereof is voluntary on the defendant's part and is not the result of any force or threats or of any promises apart from the aforesaid Plea Agreement. The defendant further advises the Court that the Plea Agreement set forth herein is the result of prior discussions between the attorney for the Government and the attorney for the defendant, all conducted with the defendant's authorization, knowledge, and consent.

g. The defendant further advises the Court that the defendant's understanding of this Plea Agreement is as set forth in this document.

h. The defendant further understands that the Government can only make a recommendation, which is not binding upon the Court. However, if the Court does not accept the plea agreement, the defendant would be permitted to withdraw the defendant's plea, if the defendant so chooses.

i. The defendant further advises the Court that the defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crime charged in the Indictment herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the defendant. However, the defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Indictment herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the defendant under oath, on the court record, and in the presence of counsel.

j. The defendant is satisfied that defense counsel has been competent and effective in representing defendant.

2. The undersigned attorneys for the Government and for the defendant represent to the court that the foregoing Plea Agreement is the agreement of the parties that has been reached pursuant to the Plea Agreement procedure provided for in Rules 11(c)(1)(A) and 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended. The attorney for the defendant further advises the Court that the defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the defendant has been advised of the defendant's right to

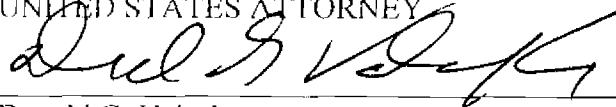
plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the defendant; and that if the defendant pleads guilty, there will not be a further trial of any kind. Further, the defendant has been advised that if the defendant pleads guilty, the Court may ask questions about the offense to which the defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the defendant in a civil or criminal proceeding, but that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

3. The defendant understands that the U.S. Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the defendant's conduct related to the offense to which the plea is offered, as well as the defendant's criminal history. The offense level or criminal history category, as calculated by the Probation Officer and determined by the court, may differ from that projected by defendant's counsel or the U.S. Attorney.

This 25 day of February, 2014.

Respectfully submitted,

GEORGE L. BECK, JR.
UNITED STATES ATTORNEY



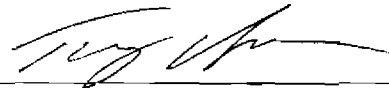
Donald G. Valeska
United States Attorney
131 Clayton Street
Montgomery, Alabama 36104



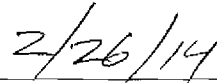
Louis V. Franklin, Sr.
Chief, Criminal Division

I have read the foregoing Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement that has been reached.

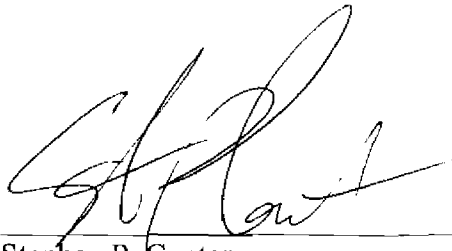
IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL.



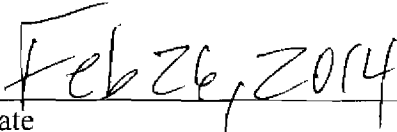
Terril Yarham
Defendant



Date



Stephen P. Ganter
Attorney for the Defendant



Date