

FILED IN OPEN COURT
ON 6-20-16 BC
Julia Richards Johnston, Clerk
US District Court
Eastern District of NC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:16-CR-11-1D

UNITED STATES OF AMERICA)
)
 v.) MEMORANDUM OF PLEA AGREEMENT
)
 WALDA LORENA LUNA)
 aka Maria Aguilar Diaz)

The United States of America ("United States"), by and through the United States Attorney for the Eastern District of North Carolina ("USA-EDNC"), and the Defendant, with the concurrence of the Defendant's Attorney, Geoffrey W. Hosford, have agreed that the above-captioned case should be concluded in accordance with this Memorandum of Plea Agreement as follows:

1. This Memorandum constitutes the full and complete record of the Plea Agreement. There are no other agreements between the parties in addition to or different from the terms herein.

2. The Defendant agrees:

- a. To waive indictment and plead guilty to Counts One, Two and Three of the Criminal Information herein.
- b. To make restitution to the Internal Revenue Service in the amount of \$2,944,799. This amount may be offset by amounts paid by co-defendants. Said restitution shall be due and payable immediately.
- c. To waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal the conviction and whatever sentence is imposed on any ground, including any issues that relate to the establishment of the advisory Guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory Guideline range that is established at sentencing, and further to waive all rights to contest the conviction or sentence in any post-

conviction proceeding, including one pursuant to 28 U.S.C. § 2255, excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant at the time of the Defendant's guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the United States of any of its rights to appeal provided by law.

- d. To waive all rights, whether asserted directly or through a representative, to request or receive from the United States any records pertaining to the investigation or prosecution of this matter, except as provided in the Federal Rules of Criminal Procedure. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.

- e. To assist the United States in the recovery and forfeiture of any assets which facilitated and/or were acquired through unlawful activities, including all such assets in which the defendant has any interest or control. Specifically, the Defendant agrees to voluntarily forfeit and relinquish to the United States the property specified in the Criminal Information. The Defendant further agrees to sign any documents necessary to effectuate the forfeiture and waives any further notice. In addition, the Defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the Criminal Information. The Court has jurisdiction over the disposition of such items and may order the investigative agency to dispose of the items in such manner as provided by the agency's regulations. The Defendant forfeits and abandons all right, title, and interest in any firearms seized during the investigation of any of the acts alleged in the Criminal Information. The Defendant further agrees that the Preliminary Order of Forfeiture shall be final as to the Defendant as of entry by the Court, as allowed by Fed. R. Crim. P. 32.2 (b) (4) (A).

- f. To pay a special assessment of \$100.00 per count, pursuant to the provisions of 18 U.S.C. § 3013. The assessment shall be paid by the Defendant at sentencing. The Defendant or Defendant's counsel shall provide a check in payment of the said assessment directly to the Clerk, U.S. District Court/EDNC.
- g. To complete and submit a financial statement under oath to the Office of the USA-EDNC no later than two weeks after the entry of the guilty plea.
- h. To abide by any conditions of release pending sentencing and report timely for service of sentence.
- i. Whenever called upon to do so by the United States, (1) to disclose fully and truthfully in interviews with Government agents information concerning all conduct related to the Criminal Information and any other crimes of which the Defendant has knowledge, and (2) to testify fully and truthfully in any proceeding. These obligations are continuing ones. The Defendant agrees that all of these statements can be used against the Defendant at trial if the Defendant withdraws from this plea agreement or is allowed to withdraw the guilty plea.
- j. If the Defendant provides false, incomplete, or misleading information or testimony, this would constitute a breach of this Agreement by the Defendant, and the Defendant shall be subject to prosecution for any federal criminal violation. Any information provided by the Defendant may be used against the Defendant in such a prosecution.
- k. To submit to a polygraph examination whenever requested by the Office of the USA-EDNC. The results of these examinations will be admissible only at the Defendant's sentencing, and at any hearing as to whether there has been a breach of this agreement. The United States may rely on these results in determining whether the Defendant has fulfilled any obligation under this Agreement.

3. The Defendant understands, agrees, and admits:

a. That as to each Count of the Criminal Information to which the Defendant is pleading guilty, the charge, code section, elements, and applicable penalties are as follows:

COUNT ONE

(1) Conspiracy to Commit Offenses Against the United States, to wit, Mail Fraud.

(2) Code section violated: 18 U.S.C. § 371.

(3) Elements: From in or about January 2009, and continuing to in or about May 2014,

First: the Defendant did combine, conspire, agree, and confederate with others to commit offenses against the United States, more fully described in the Criminal Information;

Second: the Defendant, knowing the unlawful purpose of the plan, willfully joined in it; and

Third: a conspirator committed at least one act in furtherance of the conspiracy.

(4) Maximum term of imprisonment: 5 years.

(5) Minimum term of imprisonment: None.

(6) Maximum term of supervised release: 3 years.

(7) Maximum term of imprisonment upon revocation of supervised release: 2 years.

(8) Maximum fine: \$250,000 or twice the pecuniary gain.

(9) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2.b. above.

(10) Special assessment: \$100.

COUNT TWO

- (1) Filing a False Income Tax Return.
- (2) Code section violated: 26 U.S.C. § 7206(1).
- (3) Elements: On or about April 16, 2012,
First: the Defendant made and subscribed to a return which was false to a material matter;
Second: the return contained a written declaration that is was made under the penalties of perjury;
Third: the Defendant did not believe the return to be true and correct as to every material matter; and
Fourth: the defendant acted willfully, with the specific intent to violate the law.
- (4) Maximum term of imprisonment: 3 years.
- (5) Minimum term of imprisonment: None.
- (6) Maximum term of supervised release: 3 years.
- (7) Maximum term of imprisonment upon revocation of supervised release: 2 years.
- (8) Maximum fine: \$100,000.
- (9) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2.b. above.
- (10) Special assessment: \$100.

COUNT THREE

- (1) Aggravated Identity Theft.
- (2) Code section violated: 18 U.S.C. § 1028A.
- (3) Elements: On or about April 16, 2012,

First: the Defendant knowingly transferred, possessed or used;

Second: without lawful authority;

Third: means of identification of another person; and

Fourth: during and in relation to a mail fraud, in violation of 18 USC Section 1341.

- (4) Maximum term of imprisonment: 2 years, consecutive to any other sentence imposed.
- (5) Minimum term of imprisonment: 2 years, consecutive to any other sentence imposed.
- (6) Maximum term of supervised release: 1 year.
- (7) Maximum term of imprisonment upon revocation of supervised release: 1 year.
- (8) Maximum fine: \$250,000.
- (9) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2.b. above.
- (10) Special assessment: \$100.

Total Statutory Minimum and Maximum Sentence: 10 Years Imprisonment; 3 Years Supervised Release; \$600,000 Fine; \$300 Special Assessment.

- b. That any sentence imposed will be without parole.
- c. That the Court will take into account, but is not bound by, the applicable United States Sentencing Guidelines, that the sentence has not yet been determined by the Court, that any estimate of the sentence received from any source is not a promise, and that even if a sentence up to the statutory maximum is imposed, the Defendant may not withdraw the plea of guilty.
- d. That, unless Defendant is found unable to pay, the Court will impose a fine, and failure to pay

it will subject Defendant to additional criminal and civil penalties pursuant to 18 U.S.C. §§ 3611-14.

- e. That pleading guilty may have consequences with respect to the Defendant's immigration status if the Defendant is not a natural born citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which the Defendant is pleading guilty, and some offenses create a presumption of mandatory removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including the Defendant's attorney and the Court, can predict with certainty the effect of the Defendant's conviction on the Defendant's immigration status. The Defendant nevertheless affirms that Defendant wants to plead guilty, regardless of any immigration consequences that may result from this conviction, including the Defendant's automatic removal from the United States, denial of citizenship, and denial of admission to the United States in the future.

4. The United States agrees:

- a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), at sentencing, it will dismiss the Indictment No. 7:16-CR-1D as to this Defendant only.
- b. That it reserves the right to make a sentence recommendation.
- c. That it reserves the right at sentencing to present any evidence and information pursuant to 18 U.S.C. § 3661, to offer argument or rebuttal, to recommend imposition of restitution, and to respond to any motions or objections filed by the Defendant.
- d. That, pursuant to Fed. R. Crim. P. 11(c)(1)(A), the USA-EDNC will not further prosecute the Defendant for conduct constituting the basis for the Criminal Information; however, this obligation is limited solely to the USA-EDNC and

does not bind any other state or federal prosecuting entities.

- e. That it will make known to the Court at sentencing the full extent of the Defendant's cooperation, but the United States is not promising to move for departure pursuant to USSG §5K1.1, 18 U.S.C. § 3553(e), or Fed. R. Crim. P. 35.
- f. Pursuant to USSG §1B1.8, that self-incriminating information provided by the Defendant pursuant to this Agreement shall not be used against the Defendant in determining the applicable advisory Guideline range, except as provided by §1B1.8 and except as stated in this Agreement. The United States may provide to the United States Probation Office any evidence concerning relevant conduct.
- g. That the USA-EDNC agrees not to share any information provided by the Defendant pursuant to this Agreement with other state or federal prosecuting entities except upon their agreement to be bound by the terms of this Agreement.
- h. That, provided that the defendant complies with this agreement, the USA-EDNC agrees not to directly use information provided by the defendant pursuant to this plea agreement to prosecute the defendant for additional criminal offenses, except for crimes of violence, but the USA-EDNC may make derivative use of such information against the defendant and pursue any investigative leads suggested by such information.

5. The parties agree, pursuant to Fed. R. Crim. P. 11(c)(1)(B), to the following positions as to the below-listed sentencing factors only, which are not binding on the Court in its application of the advisory Guideline range; provided that if Defendant's conduct prior to sentencing changes the circumstances with respect to any such factors, the United States is no longer bound to its positions as to those factors:

- a. None of the factors listed in USSG §§5K2.0 through 5K2.14 are applicable to warrant any upward or downward departure from the advisory Guideline range.

- b. The intended loss is between \$3,500,000 and \$9,500,000. See U.S.S.G. 2T4.1(J)
- c. A downward adjustment of 2 levels for acceptance of responsibility is warranted under USSG §3E1.1, unless the offense level determined prior to the operation of USSG 3E1.1(a) is level 16 or greater, in which event a downward adjustment of 3 levels is warranted.

This the 5th day of May, 2016.

JOHN S. BRUCE
Acting United States Attorney

Waldo Luna
WALDA LUNA, Defendant

BY: Susan B. Menzer
SUSAN B. MENZER
Assistant United States Attorney
Criminal Division

Geoffrey W. Hosford
GEOFFREY W. HOSFORD
Attorney for the Defendant

Conditionally approved this 20 day of June, 2016.
Final acceptance is deferred pending the Court's review of the
Presentence Report.

APPROVED, this _____ day of _____, 2016.

Robert B. Jones, Jr.
ROBERT B. JONES, JR.
United States Magistrate Judge