

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED
FEB 18 2015

UNITED STATES OF AMERICA,)
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 Plaintiff,)
)
 vs.)
)
 GEMMA TZEN,)
)
 Defendant.)
)

14-CR-30033-DRH

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

PLEA AGREEMENT

The attorney for the Government and the attorney for the Defendant have engaged in discussions and have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. As a result of the Plea Agreement, the Defendant intends to plead guilty to the Indictment now pending in this case.

I.

1. By pleading guilty, the Defendant fully understands that she is waiving the following rights: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the Government to prove the elements of the offenses charged against the Defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence; and the right to compel the attendance of witnesses.

2. The Defendant fully understands that she has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The Defendant's counsel has explained these rights and the consequences of the waiver of these rights. The Defendant fully understands that, as a result of the guilty plea, no trial will occur and that the only action remaining to be taken in this case is the imposition of the sentence.

3. The Defendant agrees that all agreements between the parties are written and that no oral promises, inducements, representations, or threats were made to induce Defendant to enter into the Plea Agreement and Stipulation of Facts.

4. It is further understood that the Plea Agreement is limited to the Southern District of Illinois, and cannot bind other federal, state or local prosecuting authorities. It is further understood that the Plea Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving Defendant.

5. Defendant understands that pursuant to Title 18, United States Code, Section 3013, the Court will assess a "Special Assessment" of \$100 per felony count. Defendant agrees that the full amount of the special assessment will be paid prior to or at the time of sentencing.

6. Defendant understands that the Court will impose a term of "supervised release" to follow incarceration. *See* 18 U.S.C. § 3583; U.S.S.G. § 5D1.1.

7. Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision. The estimated costs of such incarceration, community confinement, and supervision, pursuant to the Administrative Office of the United States Courts, are the following: for imprisonment: \$2,412.33 per month; for community correction center: \$2,244.17 per month;

and for supervision by the Probation Office: \$278.95 per month. *See* Memorandum of Administrative Office of the United States Courts, re: Costs of Incarceration and Supervision, May 17, 2013. The Defendant will cooperate fully with the United States Probation Office in its collection of information and preparation of the Presentence Report. Said cooperation will include signing all releases, as requested. The Defendant agrees that any Probation Officer may share any and all financial information with the United States Attorney's Office and the Defendant waives any rights he may have under the Right to Financial Privacy Act. The Defendant agrees to make complete financial disclosure by truthfully filling out, at the request of the United States Attorney's Office, a Financial Statement (OMB-500).

8. Defendant understands that the crime to which she is pleading guilty is a felony punishable by a term of imprisonment exceeding one year. Therefore, no matter what sentence the Court imposes (whether probation or any term of imprisonment), Defendant will be forbidden by federal firearms laws from possessing any type of firearm in her lifetime, unless she obtains relief pursuant to 18 U.S.C. § 925, or other appropriate federal statute.

9. The Defendant understands and agrees that if she commits any offense in violation of federal, state, or local law, or violates any condition of release, or violates any term or condition of the Plea Agreement, the Government is not bound by the provisions herein and may request that the Court impose on the Defendant any penalty allowable by law, including the filing of additional charges or sentencing enhancement notices, in addition to any sanctions that may be imposed for violation of the Court's order setting the conditions of release. No action taken or recommendation made by the Government pursuant to this paragraph shall be grounds for the Defendant to withdraw her plea of guilty.

10. The Defendant has read the Plea Agreement and has discussed it with defense counsel, understands it, and agrees to be bound by it.

11. The Defendant understands that as a non-citizen of the United States, her plea of guilty may subject her to deportation. Deportation is governed by statute and the United States Attorney's Office has no agreement with the defense counsel in regards to deportation.

II.

1. The Defendant states that she is actually guilty and will enter a plea of guilty to Count I of the Indictment, which charges her with conspiracy to commit mail and wire fraud, in violation of Title 18, United States Code, Section 1349. The maximum penalty that can be imposed for such a violation is 20 years' imprisonment or a \$250,000 fine, or both, and 3 years' supervised release. Since this case involves telemarketing, it is also subject to the sentencing provisions of the SCAMS Act, Title 18, United States Code, Section 2326. Under the terms of the Act, in addition to the statutory penalties for violation of the conspiracy statute, Defendant is also subject to an additional term of imprisonment of five years. Accordingly, the maximum penalty that can be imposed is 25 years' imprisonment, a \$250,000 fine, or both, and 5 years' supervised release.

2. The Government and the Defendant agree that the following constitute the essential elements of the offense of conspiracy to commit mail and wire fraud:

- First, that the conspiracy charged in the Indictment existed.
- Second, that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy.

The Defendant agrees and admits that her conduct violated these essential elements of the offense.

3. The Government submits to the Court that it appears that under the Sentencing Guidelines, after all factors have been considered, Defendant will have an Offense Level of 13 and a Criminal History Category of I, where the sentencing range is 12-18 months and the fine range is between \$3,000-\$30,000.

Levels	Basis	U.S.S.G.
7	Base offense level	2B1.1(a)(1)
6	More than \$30,000	2B1.1(b)(1)(D)
2	More than 10 victims:	2B1.1(b)(2)(A)
15	Criminal History Category: I	

-2	Acceptance of Responsibility Offense Level: 13	Range: 12-18 months
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The Government and Defendant also submit to the Court that this submission is not intended to be binding on the Court and that the Court ultimately will determine the Guideline range after receiving the Presentence Report and giving both parties the opportunity to comment thereon. The Defendant expressly recognizes that, regardless of the Guideline range found or the sentence imposed by the Court, she will not be permitted to withdraw her plea. The Government and the Defendant agree that the offense level and the criminal history category calculations submitted by the parties herein constitute the parties' good faith efforts to inform the Court of their beliefs as to

the applicable sentencing range and acknowledge that it is the Court which is ultimately responsible for determining the applicable Guideline range and determining the sentence which will be imposed. The Government specifically reserves the right to argue for, present testimony, or otherwise support the Probation Office's or the Court's findings as to Offense Level and Criminal History Category (which may be in excess of the calculations set forth herein by the Defendant and the Government). The Defendant understands that the Sentencing Guidelines are advisory only and that the Court has the discretion to sentence the Defendant anywhere up to the statutory maximum sentence after consideration of the Sentencing Guidelines, and the factors set forth in 18 U.S.C. § 3553(a), including the nature and circumstances of the offense(s) and the criminal history and characteristics of the Defendant.

4. The Government agrees that the Defendant has voluntarily demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, and the Government will accordingly recommend a reduction of 2 Levels, reducing the Offense Level from 15 to Offense Level 13 (under the Government's calculations). *See* U.S.S.G. § 3E1.1. A reduction for acceptance of responsibility is dependent on the Defendant not committing any acts or taking any position prior to sentencing inconsistent with acceptance of responsibility, including committing any acts constituting obstruction of justice.

5. The Defendant and the Government agree that the initial Guideline Offense Level in this case is 7, pursuant to U.S.S.G. § 2B1.1(a)(1).¹ The Government submits that the total loss related to defendant's conduct is more than \$30,000, but less than \$70,000. Accordingly, the defendant's offense level is increased by 6 pursuant to U.S.S.G. § 2B1.1(b)(1)(D), to 13 points.

¹ The 2013 Guidelines Manual was used in the calculation of the Sentencing Guidelines.

Since the offense involved 10 or more victims, the Government submits that the level is increased by 2, pursuant to U.S.S.G. § 2B1.1(b)(2)(A), to 15 points.

6. The Defendant and the Government agree that no victim-related adjustments apply to this offense. *See* U.S.S.G. § 3A.

7. The Government and the Defendant agree that Defendant was not a manager or supervisor of a criminal activity that involved five or more participants or was otherwise extensive and that, therefore, the Defendant's base level should not be increased under U.S.S.G. § 3B1.1(b).

8. The Defendant and the Government agree that the Defendant has not obstructed justice in this case and therefore, pursuant to U.S.S.G. § 3C1.1, the Defendant's base offense level should not be increased.

9. The Defendant and the Government agree that the Defendant has voluntarily demonstrated a recognition and affirmative acceptance of personal responsibility for this criminal conduct and is thus entitled to a two-level reduction of her Offense Level from 15 to 13. *See* U.S.S.G. § 3E1.1(a).

10. In exchange for Defendant's plea of guilty to Count I of the Indictment, and because Defendant has timely assisted authorities in the prosecution of her own misconduct, the United States will recommend a reduction of an additional one level, reducing the Offense Level from 21 to 20. *See* U.S.S.G. § 3E1.1(b).

11. Defendant and the Government submit that it appears that Defendant has amassed zero (0) Criminal History points and that, therefore, the Sentencing Guideline Criminal History Category is I. Defendant expressly recognizes that the final calculation will be determined by the Court after considering the Presentence Report, the views of the parties, and any evidence

submitted before sentencing. Defendant recognizes that, regardless of the criminal history found by the Court, Defendant will not be able to withdraw her plea of guilty.

12. The Defendant and the Government agree that under provisions of the SCAMS Act, Title 18, United States Code, Section 2327(a) & (b)(4), restitution is mandatory in this case. Defendant understands that the Government will ask for restitution under 18 U.S.C. § 2327(a) & (b)(4), 18 U.S.C. § 3663A, to the extent that an accounting of the losses to each victim is practicable under the procedures specified by 18 U.S.C. § 3664.

13. Defendant will cooperate fully with the United States Probation Office in its collection of information and preparation of the Presentence Report in this matter. Said cooperation will include signing all releases, as requested.

III.

1. The Defendant understands that by pleading guilty, Defendant is waiving all appellate issues that might have been available if Defendant had exercised the right to trial. The Defendant is fully satisfied with the representation received from defense counsel. The Defendant acknowledges that the Government has provided complete discovery compliance in this case. The Defendant has reviewed the Government's evidence and has discussed the Government's case, possible defenses and defense witnesses with defense counsel.

2. The Defendant is aware that Title 18, Title 28, and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence through appeal or collateral attack. However, in exchange for the recommendations and concessions made by the United States in this plea agreement, the Defendant knowingly and voluntarily waives her right to contest any aspect of her conviction and sentence that could be contested under Title 18 or Title 28, or under any other provision of federal law, except that if the sentence

imposed is in excess of the Sentencing Guidelines as determined by the Court (or any applicable statutory minimum, whichever is greater), the Defendant reserves the right to appeal the reasonableness of the sentence. The Defendant acknowledges that in the event such an appeal is taken, the Government reserves the right to fully and completely defend the sentence imposed, including any and all factual and legal findings supporting the sentence, even if the sentence imposed is more severe than that recommended by the Government.

3. Defendant's waiver of her right to appeal or bring collateral challenges shall not apply to: 1) any subsequent change in the interpretation of the law by the United States Supreme Court or the United States Court of Appeals for the Seventh Circuit that is declared retroactive by those Courts and that renders the Defendant actually innocent of the charges covered herein; and 2) appeals based upon Sentencing Guideline amendments that are made retroactive by the United States Sentencing Commission (see U.S.S.G. § 1B1.10). The Government reserves the right to oppose such claims for relief.

4. Defendant's waiver of her appeal and collateral review rights shall not affect the Government's right to appeal Defendant's sentence pursuant to Title 18, United States Code, Section 3742(b). This is because United States Attorneys lack any right to control appeals by the United States, through plea agreements or otherwise; that right belongs to the Solicitor General. 28 C.F.R. § 0.20(b).

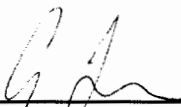
5. Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any Department or Agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

6. Defendant waives all claims under the Hyde Amendment, Title 18, United States Code, Section 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

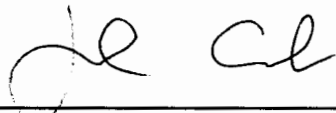
IV.

There are no matters in dispute.

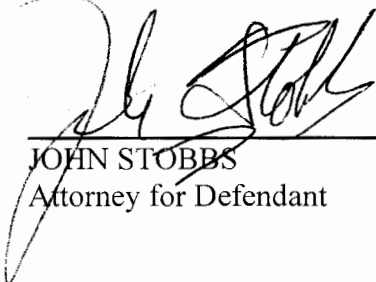
STEPHEN R. WIGGINTON
United States Attorney



GEMMA TZEN
Defendant



fr MICHAEL HALLOCK
Special Assistant United States Attorney



JOHN STOBBS
Attorney for Defendant

Date: 2-18-15

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