

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE

UNITED STATES OF AMERICA

v.

MELISA REBECCA THACKER

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3:12-CR-5
JUDGES Yarlan/Shirley

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Melisa Rebecca Thacker and the defendant's attorney, Joseph Lodato, have agreed upon the following:

1. The defendant will waive indictment and arraignment and plead guilty to an Information charging the defendant with the following offense:

a) Count One . Mail Fraud in violation of 18 U.S.C. § 1341.

The punishment for this offense is as follows. Up to twenty (20) years; five (5) years of supervised release, \$250,000.00 fine, and a \$100 mandatory assessment and restitution in the amount of one hundred eighty-three thousand, three hundred eighty six dollars and forty-six cents (\$183,386.46).

2. The defendant has read the information, discussed the charges and possible defenses with defense counsel, and understands the crime charged. The defendant is pleading guilty because the defendant is in fact guilty. In order to be guilty, the defendant agrees that each of the following elements of the crime must be proved beyond a reasonable doubt:

Count 1. Title 18, United States Code, Section 1341
MAIL FRAUD

- A. That a defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by means of false and fraudulent pretenses, representations or promises;
- B. That the defendant did so willfully with an intent to defraud; and
- C. That the defendant used the United States Postal Service by mailing, or by causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud.

3. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

FACTUAL BASIS:

The Defendant was employed by KAOUSIAS LAW, PLLC located at 507 South Gay Street, Suite 1220, Knoxville in the Eastern District of Tennessee from 2007 until 2010. KAOUSIAS LAW, PLLC was operated by a sole practitioner, TK. The defendant was hired to work as a legal assistant/office manager. The defendant's duties were to manage the office to include managing work flow and reconciling accounts. The defendant received all the incoming mail, opened the mail and made sure bills coming in were being paid. The defendant was also expected to deposit checks into the firm checking account, as well as prepare checks for TK's signature.

The defendant had access to online payment of bills for the operating account of the law firm. The defendant also had access to TK's personal credit card statements as they were mailed to

the office. However, the defendant did not have authority to sign the firm checks, access any of TK's personal accounts or to open new accounts for the firm.

The defendant had a position of trust in managing the KAOUSIAS LAW office on a daily basis which she violated pursuant to USSG §3B1.3. This trust was violated over the three years in which the defendant was employed with KAOUSIAS LAW.

Beginning on December 3, 2007 through November 25, 2009, the defendant forged sixty-one (61) checks to herself on the KAOUSIAS LAW checking account totaling forty-eight thousand eight hundred six dollars and forty-eight cents (\$48,806.48).

In 2008 the defendant without the knowledge and consent of TK, requested an additional credit card in the name of the defendant to be added to the personal American Express credit card account (#1105) in the name of TK. At the instructions of the defendant, the additional card was mailed to the defendant at the address of KAOUSIAS LAW. The defendant intercepted the card and used it without authority to purchase a computer for one thousand nine hundred and forty six dollars and seventy-eight cents (\$1,946.78) on October 30, 2008.

From April 21, 2008 through December 7, 2009 the defendant without authority, used TK's personal visa credit card (#7727) and pin number and made charges and cash advances on the card totaling sixty-seven thousand eight hundred ninety-one dollars and forty-eight cents (\$67,891.48). This included a gastric bypass surgery for three thousand dollars (\$3,000.00). This card was never used by TK. TK did not learn of the fraud until the defendant fell behind in the minimum payments on the card and the credit card company contacted TK.

During the time period of April of 2010 through September 2010, the defendant forged and deposited eighteen (18) checks that came into the law firm as payment for legal work provided by

TK into a fraudulent account the defendant created for her own gain. The defendant defrauded TK and the law firm a total of ten thousand five hundred twenty-eight dollars and twenty-one cents (\$10,528.21).

On or about April 23, 2010, the defendant opened a checking account with Bank of America (#1012) under the name of TK without authority to do so. From April of 2010 through June of 2010 the defendant made \$7,744.44 worth of illegal charges on the account.

From June 15, 2009 through August 5, 2010 the defendant obtained the visa card information through Bank of America (#2745) which belonged to TK. The defendant made unauthorized charges of thirty-six thousand one hundred and three dollars and seventy-three cents (\$36,103.73) on the credit card.

In July of 2010 the defendant opened a business checking account with Bank of America (#9766) as KAOUSIAS LAW using TK's personal information and without authority. The defendant debited the account for her own personal gain. The debited amount was ten thousand three hundred sixty-five dollars and thirty-four cents (\$10,365.34). In order to execute her scheme the defendant directed Bank of America to mail the monthly bank statements to the firm address so that she could intercept the fraudulent account information and continue defrauding TK and KAOUSIAS LAW.

The total amount of loss to TK and KAOUSIAS LAW, PLLC is one hundred eighty-three thousand three hundred and eight-six dollars and forty-six cents (\$183,386.46).

4. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

a) the right to be indicted by a grand jury for these crimes;

- b) the right to plead not guilty;
- c) the right to a speedy and public trial by jury;
- d) the right to assistance of counsel at trial;
- e) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;
- f) the right to confront and cross-examine witnesses against the defendant;
- g) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and
- h) the right not to testify and to have that choice not used against the defendant.

5. The parties agree that the appropriate disposition of this case would be the following as to each count:

- a) The Court may impose any lawful term of imprisonment, any lawful fine, and any lawful term of supervised release up to the statutory maximum;
- b) The Court will impose special assessment fees as required by law; and
- c) The Court may order forfeiture as applicable and restitution as appropriate.

No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the defendant's guilty plea(s). The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination

will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

6. The defendant and the United States agree that a sentencing range of an offense level of sixteen (16) and a criminal history category of I being twenty-one to twenty-seven months (21-27) imprisonment followed by a five (5) year term of supervised release and restitution in the amount of one hundred eighty-three thousand three hundred and eight-six dollars and forty-six cents (\$183,386.46) is the appropriate disposition of this case.¹ The Court may still impose any lawful fine(s) and any special assessment fees as required by law, and order forfeiture as applicable as appropriate.

The defendant and the United States agree that a particular provision of the Sentencing Guidelines, policy statement, or sentencing factor, namely Guideline provision 3B1.3 abuse of trust and 3E1.1, do apply to the defendant's sentence.

7. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any

¹This guideline range was factored using USSG §2b1.1 for a BOL of 7, adding an additional 10 points for the loss amount of total amount of restitution being \$183,386.46, two points added for abuse of trust pursuant to USSG §3b1.3, minus three points for acceptance of responsibility pursuant to 3E1.1 for a total of 16.

conduct or make any statements that are inconsistent with accepting responsibility for the defendant's offense, including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

8. The defendant agrees to pay the special assessment in this case prior to sentencing.

9. The defendant agrees, pursuant to 18 U.S.C. § 3663(a)(3), that the order of restitution will be in the amount of one hundred eighty-three thousand three hundred and eight-six dollars and forty-six cents (\$183,386.46) .

10. Financial Obligations. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount(s) shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel.

In order to facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

b) The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

11. (a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offense(s) committed, the defendant agrees not to file a direct appeal of the defendant's conviction(s) or sentence except the defendant retains the right to appeal a sentence imposed above the sentencing guideline range or any applicable mandatory minimum sentence (whichever is greater) determined by the district court.

(b) In addition, the defendant knowingly and voluntarily waives the right to file any

motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the defendant's conviction(s) and/or resulting sentence. The parties agree that the defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective assistance of counsel or prosecutorial misconduct not known to the defendant by the time of the entry of judgment.

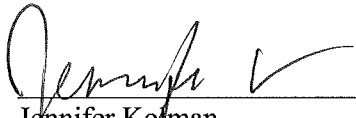
12. This agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement in any way (including but not limited to failing to enter guilty plea(s) as agreed herein, moving to withdraw guilty plea(s) after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial or double jeopardy defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea(s) in this case.

13. This plea agreement constitutes the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charge(s), and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be


modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY

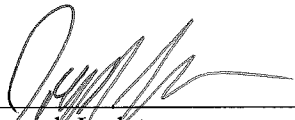
1/23/2012
Date

By: 
Jennifer Kolman
Assistant United States Attorney

1/20/2012
Date


Melisa Rebecca Thacker
Defendant

1/20/2012
Date


Joseph Lodato
Attorney for the Defendant