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6 Attorneys for Plaintiff  
United States of America  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 ANDREA MARIE GERVAIS,  
aka ANDREA MARIE DANGERFIELD,  
15 Defendant.  
16

CASE NO. 2:21-CR-0058-KJM  
PLEA AGREEMENT  
DATE: APRIL 19, 2021  
TIME: 9:00 AM  
COURT: Hon. Kimberly J. Mueller

17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The Information in this case charges the defendant, ANDREA M. GERVAIS, with a violation of  
20 18 U.S.C. § 641 – Theft of Government Property. This document contains the complete plea agreement  
21 between the United States Attorney’s Office for the Eastern District of California (the “government”)  
22 and the defendant regarding this case. This plea agreement is limited to the United States Attorney’s  
23 Office for the Eastern District of California and cannot bind any other federal, state, or local  
24 prosecuting, administrative, or regulatory authorities.

25 B. Court Not a Party.

26 The Court is not a party to this plea agreement. Sentencing is a matter solely within the  
27 discretion of the Court, and the Court may take into consideration any and all facts and circumstances  
28 concerning the criminal activities of defendant, including activities which may not have been charged in

1 the Information. The Court is under no obligation to accept any recommendations made by the  
2 government, and the Court may in its discretion impose any sentence it deems appropriate up to and  
3 including the statutory maximum stated in this plea agreement.

4 If the Court should impose any sentence up to the maximum established by the statute, the  
5 defendant cannot, for that reason alone, withdraw her guilty plea, and she will remain bound to fulfill all  
6 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,  
7 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence she will  
8 receive.

## 9 II. DEFENDANT'S OBLIGATIONS

### 10 A. Guilty Plea.

11 The defendant will plead guilty to Count One, a violation of 18 U.S.C. § 641 – Theft of  
12 Government Property. The defendant agrees that she is in fact guilty of this charge and that the facts set  
13 forth in the Factual Basis for Plea attached hereto as Exhibit A are accurate.

14 The defendant agrees that this plea agreement will be filed with the Court and become a part of  
15 the record of the case. The defendant understands and agrees that she will not be allowed to withdraw  
16 her pleas should the Court not follow the government's sentencing recommendations.

17 The defendant agrees that the statements made by her in signing this Agreement, including the  
18 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by  
19 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a  
20 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)  
21 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this  
22 Agreement generally.

### 23 B. Restitution.

24 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of  
25 certain offenses. Defendant agrees that her conduct is governed by the Mandatory Restitution Act  
26 pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims  
27 affected by this offense, including, but not limited to, the victims covered in the factual basis, victims  
28 covered in those counts to be dismissed as part of the plea agreement pursuant to 18 U.S.C. §

1 3663A(a)(3), and other victims as a result of the defendant's conduct for the offenses charged in the  
2 indictment. Restitution payments shall be by cashier's or certified check made payable to the Clerk of  
3 the Court.

4 Defendant further agrees that she will not seek to discharge any restitution obligation or any part  
5 of such obligation in any bankruptcy proceeding.

6 **C. Fine.**

7 The parties agree that no fine is appropriate in this case.

8 **D. Special Assessment.**

9 The defendant agrees to pay a special assessment of \$300 at the time of sentencing by delivering  
10 a check or money order payable to the United States District Court to the United States Probation Office  
11 immediately before the sentencing hearing. The defendant understands that this plea agreement is  
12 voidable at the option of the government if she fails to pay the assessment prior to that hearing. If the  
13 defendant is unable to pay the special assessment at the time of sentencing, she agrees to earn the money  
14 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

15 **E. Violation of Plea Agreement by Defendant/Withdrawal of Pleas.**

16 If the defendant violates this plea agreement in any way, withdraws her plea, or tries to withdraw  
17 her plea, this plea agreement is voidable at the option of the government. If the government elects to  
18 void the agreement based on the defendant's violation, the government will no longer be bound by its  
19 representations to the defendant concerning the limits on criminal prosecution and sentencing as set  
20 forth herein. A defendant violates the plea agreement by committing any crime or providing or  
21 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in  
22 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting  
23 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding  
24 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through  
25 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)  
26 to prosecute the defendant on any of the counts to which she pleaded guilty; (2) to reinstate any counts  
27 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would  
28 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for

1 any federal criminal violation of which the government has knowledge. The decision to pursue any or  
2 all of these options is solely in the discretion of the United States Attorney's Office.

3 By signing this plea agreement, the defendant agrees to waive any objections, motions, and  
4 defenses that the defendant might have to the government's decision. Any prosecutions that are not  
5 time-barred by the applicable statute of limitations as of the date of this plea agreement may be  
6 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of  
7 limitations between the signing of this plea agreement and the commencement of any such prosecutions.  
8 The defendant agrees not to raise any objections based on the passage of time with respect to such  
9 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy  
10 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as  
11 of the date of this plea agreement. The determination of whether the defendant has violated the plea  
12 agreement will be under a probable cause standard.

13 In addition, (1) all statements made by the defendant to the government or other designated law  
14 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,  
15 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or  
16 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no  
17 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal  
18 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by  
19 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.  
20 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

21 **F. Forfeiture.**

22 The defendant agrees to abandon and forfeit to the Federal Bureau of Investigation voluntarily  
23 and immediately all of her right, title, and interest to any and all seized items, specifically including the  
24 following seized items: stolen mail, stolen checks, fraudulent bankcards, and electronic devices  
25 containing personally identifiable information of identity theft victims, including smart phones, tablets,  
26 and laptops. The defendant agrees to waive her right to notice of any forfeiture proceeding involving  
27 this property and not file a claim or assist others in filing a claim in that forfeiture proceeding.

1           **G.     Asset Disclosure.**

2           The defendant agrees to make a full and complete disclosure of her assets and financial  
3 condition, and will complete the United States Attorney’s Office’s “Authorization to Release  
4 Information” and “Financial Affidavit” within five (5) weeks from the entry of the defendant’s change  
5 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order  
6 to that effect. The defendant understands that if she fails to complete truthfully and provide the  
7 described documentation to the United States Attorney’s office within the allotted time, she will be  
8 considered in violation of the agreement, and the government shall be entitled to the remedies set forth  
9 in section II.E above, above.

10                                   **III.     THE GOVERNMENT’S OBLIGATIONS**

11           **A.     Dismissals/Other Charges.**

12           The government agrees to move, at the time of sentencing, to dismiss without prejudice any  
13 remaining counts in the pending Information and Complaint. The government also agrees not to  
14 reinstate any dismissed count except if this agreement is voided as set forth herein, or as provided in  
15 paragraphs II.E (Violation of Plea Agreement by Defendant/Withdrawal of Pleas), VI.B (Stipulations  
16 and Positions Affecting Guideline Calculation), and VII.B (Waiver of Appeal and Collateral Attack)  
17 herein.

18           **B.     Recommendations.**

19                   1.     Incarceration Range.

20                   The government will recommend that the defendant be sentenced at the low end the  
21 applicable guideline range as determined by the Court.

22                   2.     Acceptance of Responsibility.

23                   The government will recommend a two-level reduction (if the offense level is less than  
24 16) or a three-level reduction (if the offense level reaches 16) in the computation of her offense level if  
25 the defendant clearly demonstrates acceptance of responsibility for her conduct as defined in U.S.S.G. §  
26 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of  
27 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging  
28 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the

1 preparation of the pre-sentence report or during the sentencing proceeding.

2 **C. Use of Information for Sentencing.**

3 The government is free to provide full and accurate information to the Court and Probation,  
4 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate  
5 statements or arguments by the defendant, her attorney, Probation, or the Court. The defendant also  
6 understands and agrees that nothing in this Plea Agreement bars the government from defending on  
7 appeal or collateral review any sentence that the Court may impose.

8 **IV. ELEMENTS OF THE OFFENSE**

9 At a trial, the government would have to prove beyond a reasonable doubt the following  
10 elements of the offense to which the defendant is pleading guilty, Count One, a violation of 18 U.S.C. §  
11 641 – Theft of Government Property:

12 First, between in or about March 2020 and in or about December 2020, the defendant knowingly  
13 embezzled, stole, converted to her use, or converted to the use of another money or property of value  
14 with the intention of depriving the owner of the use or benefit of the money or property;

15 Second, the money or property belonged to the United States; and

16 Third, the value of the money or property was more than \$1,000.

17 The defendant fully understands the nature and elements of the crimes charged in the  
18 information to which she is pleading guilty, together with the possible defenses thereto, and has  
19 discussed them with her attorney.

20 **V. MAXIMUM SENTENCE**

21 **A. Maximum Penalty.**

22 The maximum sentence that the Court can impose for a violation of 18 U.S.C. § 641 (Theft of  
23 Government Property) is 10 years of incarceration, a fine of \$250,000, a 3-year period of supervised  
24 release, and a special assessment of \$100. By signing this plea agreement, the defendant also agrees that  
25 the Court can order the payment of restitution for the full loss caused by the defendant's wrongful  
26 conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the  
27 specific counts to which she is pleading guilty. The defendant further agrees, as noted above, that she  
28 will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by

1 the Court.

2 **B. Violations of Supervised Release.**

3 The defendant understands that if she violates a condition of supervised release at any time  
4 during the term of supervised release, the Court may revoke the term of supervised release and require  
5 the defendant to serve up to two additional years imprisonment.

6 **VI. SENTENCING DETERMINATION**

7 **A. Statutory Authority.**

8 The defendant understands that the Court must consult the Federal Sentencing Guidelines and  
9 must take them into account when determining a final sentence. The defendant understands that the  
10 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the  
11 Sentencing Guidelines and must take them into account when determining a final sentence. The  
12 defendant further understands that the Court will consider whether there is a basis for departure from the  
13 guideline sentencing range (either above or below the guideline sentencing range) because there exists  
14 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into  
15 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further  
16 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must  
17 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

18 **B. Stipulations and Positions Affecting Guideline Calculation.**

19 The government and the defendant agree that the following is their present best estimate of the  
20 defendant's offense level under the sentencing guidelines. These estimates shall not be binding on the  
21 Court, the Probation Office, or the parties:

- 22 1. Base Offense Level: +6
- 23 2. Acceptance of Responsibility: See paragraph III.B.2 above
- 24 3. Intended Loss Amount: +10 (Over \$150,000 – U.S.S.G. §2B1.1(b)(1)(F))
- 25 4. Victim-related Adjustments: +2 (10 or more victims – U.S.S.G. §2B1.1(b)(2)(A))

26 The parties agree that they will not seek or argue in support of any other specific offense  
27 characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"),  
28 or cross-references, except that the government may move for a departure or an adjustment based on the

1 defendant's post-plea obstruction of justice (§3C1.1). Both parties agree not to move for, or argue in  
2 support of, any departure from the Sentencing Guidelines.

3 The defendant is free to move for, and argue in support of, a variance and recommend to the  
4 Court whatever sentence she believes is appropriate under 18 U.S.C. § 3553(a). The government is not  
5 obligated to recommend any specific sentence.

## 6 VII. WAIVERS

### 7 A. Waiver of Constitutional Rights.

8 The defendant understands that by pleading guilty she is waiving the following constitutional  
9 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to  
10 be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative  
11 defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of  
12 conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to  
13 testify on her behalf; (f) to confront and cross-examine witnesses against her; and (g) not to be  
14 compelled to incriminate herself.

### 15 B. Waiver of Appeal and Collateral Attack.

16 The defendant understands that the law gives the defendant a right to appeal her guilty plea,  
17 conviction, and sentence. The defendant agrees as part of her pleas, however, to give up the right to  
18 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not  
19 exceed the statutory maximums for the offenses to which she is pleading guilty. The defendant  
20 understands that this waiver includes, but is not limited to, any and all constitutional and/or legal  
21 challenges to the defendant's conviction and guilty plea, including arguments that the statutes to which  
22 defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts  
23 attached to this agreement is insufficient to support the defendant's plea of guilty. The defendant  
24 specifically gives up the right to appeal any order of restitution the Court may impose.

25 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if  
26 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the  
27 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant  
28 understands that these circumstances occur infrequently and that in almost all cases this Agreement



1 constitutes a complete waiver of all appellate rights.

2 In addition, regardless of the sentence the defendant receives, the defendant also gives up any  
3 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any  
4 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

5 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever  
6 attempts to vacate her pleas, dismiss the underlying charge, or modify or set aside her sentence on any of  
7 the counts to which she is pleading guilty, the government shall have the rights set forth in Section II.E  
8 herein.

9 **C. Waiver of Attorneys' Fees and Costs.**

10 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-  
11 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the  
12 investigation and prosecution of all charges in the above-captioned matter and of any related allegations  
13 (including without limitation any charges to be dismissed pursuant to this plea agreement and any  
14 charges previously dismissed).

15 **D. Impact of Plea on Defendant's Immigration Status.**

16 Defendant recognizes that pleading guilty may have consequences with respect to her  
17 immigration status if she is not a citizen of the United States. Under federal law, a broad range of  
18 crimes are removable offenses, including offenses to which the defendant is pleading guilty. The  
19 defendant and her counsel have discussed the fact that the charge to which the defendant is pleading  
20 guilty is an aggravated felony, or a crime that is likely to be determined to be an aggravated felony under  
21 8 USC § 1101(a)(43), and that while there may be arguments that defendant can raise in immigration  
22 proceedings to avoid or delay removal, it is virtually certain that defendant will be removed. Removal  
23 and other immigration consequences are the subject of a separate proceeding, however, and defendant  
24 understands that no one, including her attorney or the district court, can predict to a certainty the effect  
25 of her conviction on her immigration status. Defendant nevertheless affirms that she wants to plead  
26 guilty regardless of any immigration consequences that her plea may entail, even if the consequence is  
27 her automatic removal from the United States.

1 **VIII. ENTIRE PLEA AGREEMENT**

2 Other than this plea agreement, no agreement, understanding, promise, or condition between the  
3 government and the defendant exists, nor will such agreement, understanding, promise, or condition  
4 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and  
5 counsel for the United States.

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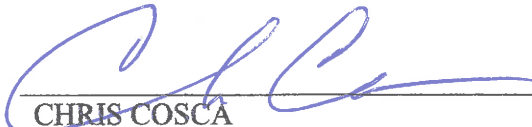
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**IX. APPROVALS AND SIGNATURES**

**A. Defense Counsel.**

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

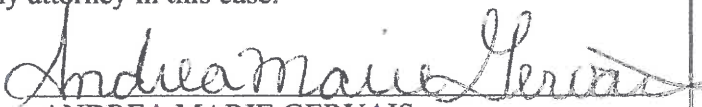
Dated: 7/13, 2021

  
CHRIS COSCA  
Attorney for Defendant

**B. Defendant:**

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 4/13/ , 2021

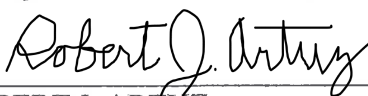
  
ANDREA MARIE GERVAIS,  
Defendant

**C. Attorney for United States:**

I accept and agree to this plea agreement on behalf of the government.

Dated: April 15, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

  
ROBERT J. ARTUZ  
Special Assistant U.S. Attorney

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EXHIBIT "A"

Factual Basis for Pleas

Between March 2020 and December 2020, Defendant ANDREA M. GERVAIS, and others, including Person 1, in the State and Eastern District of California, knowingly executed and participated in with intent to defraud a material scheme to defraud the State of California and the United States, and to obtain money from the State of California and the United States by means of materially false and fraudulent pretenses and representations. The purpose of the scheme was to obtain money from the State of California and the United States by submitting fraudulent Pandemic Unemployment Assistance (PUA) claims to California's Employment Development Department (EDD). PUA was a federal unemployment insurance program established by the CARES Act due to COVID-19 and administered by EDD.

Person 1 used identity-theft victims' personally identifiable information (PII) and other information to submit over 90 fraudulent PUA claim applications to EDD without the victims' knowledge. These claims sought PUA benefits including money of the United States. EDD approved at least 10 of these claims for payment, and the total value of such approved benefits was approximately \$249,321. EDD then paid out approximately \$185,458 in PUA benefits in the form of Bank of America debit cards that were mailed to GERVAIS's residence. At least one of the approved claims was made using the identity of a sitting U.S. Senator, which resulted in the mailing of an EDD debit card in the Senator's name to GERVAIS's residence.

GERVAIS knew that the mailed EDD debit cards were not issued in her name or for her benefit, and that the cards were issued using stolen identities. GERVAIS also knew that the money on the debit cards was paid by EDD for unemployment insurance benefits. Nonetheless, GERVAIS posed as the identity-theft victims, including the U.S. Senator, and used the debit cards to withdraw cash for the benefit of at least Person 1, whom she knew was not entitled to the money. GERVAIS then transferred most of the proceeds, either directly or indirectly, to Person 1.

I have reviewed the entire factual basis in Exhibit A above and, as far as my own conduct and personal knowledge is concerned, I adopt it as my own true statement.

DATED:

4/13, 2021



ANDREA M. GERVAIS  
Defendant