

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

AUG 15 2024

MITCHELL R. ELFERS
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHOLOPATER FALTAS,

Defendant.

Cr. No. 22-1667 MLG

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, PHOLOPATER FALTAS, and the Defendant’s counsel, BRITANY SCHAFFER and AHMAD ASSED:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant’s right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant’s attorney and is fully satisfied with that attorney’s legal representation.

RIGHTS OF THE DEFENDANT

- 2. The Defendant further understands the Defendant’s rights:
 - a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury; and
 - c. at a trial:

- 1) to confront and cross-examine adverse witnesses,
- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Counts 1 through 10 of the indictment, charging violations of 18 U.S.C. §§ 1341, that being Mail Fraud, and 1343, that being Wire Fraud.

SENTENCING

4. The Defendant understands that the maximum penalties¹ provided by law for these offenses are:
- a. imprisonment for a period of not more than 30 years;
 - b. a fine not to exceed \$1 million;
 - c. a term of supervised release of not more than 5 years to follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and

¹ The maximum penalties listed in this plea agreement reflect statutory enhancements for offenses occurring in relation to or involving any benefit authorized by a presidentially declared major disaster or emergency. *See* 18 U.S.C. §§ 1341, 1343.

e. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties are aware that the Court will decide whether to accept or reject this plea agreement. The Court may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the Defendant shall have the right to withdraw the Defendant's plea of guilty.

7. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under U.S.S.G. § 1B1.3.

ELEMENTS OF THE OFFENSE

8. If this matter proceeded to trial, the Defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for violations of the charges listed below:

Counts 1 through 8: 18 U.S.C. § 1341, that being, Mail Fraud

- First:* The defendant devised a scheme or artifice to defraud;
- Second:* The defendant acted with specific intent to defraud;
- Third:* The defendant caused another person to mail something through the U.S. Postal Service for the purpose of carrying out the scheme; and

Fourth: The scheme employed false or fraudulent pretenses, representations, or promises that were material.

Counts 9 through 10: 18 U.S.C. § 1343, that being, Wire Fraud

First: The defendant devised a scheme or artifice to defraud;

Second: The defendant acted with specific intent to defraud;

Third: The defendant used interstate or foreign wire communications or facilities for the purpose of carrying out the scheme; and

Fourth: The scheme employed false or fraudulent pretenses, representations, or promises that were material.

DEFENDANT'S ADMISSION OF FACTS

9. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

Between approximately April 2020 and October 2020, in Bernalillo County in the District of New Mexico, I devised a scheme or artifice to defraud the New Mexico Department of Workforce Solutions (“NMDWS”). This scheme included submitting fraudulent applications for unemployment insurance to in the names of at least eight other people. As part of the scheme, I solicited personally identifying information (“PII”) from these people by telling them that I would be able to access benefits on their behalf. Each of the applications corresponding to the charges in the indictment contained materially false statements relating to eligibility for unemployment insurance benefits and/or the contact information of the purported applicant. I intentionally included false information in the applications so that the

applications would be more likely to be approved and so that I could maintain control of the funds that were disbursed by NMDWS.

As a result of the fraudulent applications I submitted, NMDWS (1) caused debit cards to be sent via the U.S. Postal Service to addresses in New Mexico to which I had access and (2) caused electronic transfers of unemployment insurance funds into one or more bank accounts that I controlled. Once I received the debit cards, I caused them to be activated and NMDWS disbursed unemployment insurance benefits to them. I now know that each of the debit cards was mailed to New Mexico from Indianapolis, Indiana. I also now know that each unemployment insurance application submitted to NMDWS triggered an automatic electronic query of state unemployment agencies throughout the United States and that each ACH transfer of unemployment insurance funds made by direct deposit involved the use of interstate wires.

As a result of the fraudulent unemployment insurance applications that I submitted, NMDWS disbursed at least \$66,867 in the names of the purported applicants whose initials are contained in the indictment. I controlled these funds either by possessing the debit cards containing the funds or by controlling one of the bank accounts into which the funds were deposited. I typically told the purported applicants (i.e., the people whose initials appear in the indictment) that they either qualified for only a small fraction of the total funds distributed in their name or that their application was denied. This allowed me to retain the majority of the benefits for myself.

I was aware at the time of the scheme that certain unemployment insurance benefits were made available under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") in response to the COVID-19 pandemic. I now know that the mail fraud and wire fraud offenses to which I am pleading guilty occurred in relation to a presidentially declared major disaster or emergency.

10. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant is pleading guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

RECOMMENDATIONS

11. The United States and the Defendant recommend as follows:

- a. The Defendant and the United States have made an AGREEMENT pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that either a sentence to between zero months of imprisonment and a maximum term of imprisonment of twelve (12) months, ^{and one (1) day NTPs} with the possibility of a “split ~~split~~ sentence” served partially in custody and partially in home detention pursuant to USSG § 5C1.1(d), is the appropriate disposition in this case.² PF
The Defendant further recognizes that while the Defendant’s attorney may have made a prediction or estimate of the guideline range, the Defendant understands that the Court is not bound by any such estimate or prediction.
- b. In addition, the Court may order a fine not to exceed \$1,000,000, a term of supervised release of not more than 5 years following imprisonment, a mandatory special penalty assessment and restitution.
- c. If the Court accepts the plea agreement, it must inform the Defendant that the agreed upon disposition will be included in the judgment, and the Court is bound by the terms of the plea agreement once the Court accepts the plea agreement.

² If the Court imposes a sentence of 12 months of incarceration, the parties agree that the Court should order a period of incarceration of 12 months and a day, which, if imposed, would allow the Defendant to be eligible for federal good time credit.

DEFENDANT'S ADDITIONAL AGREEMENT

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

13. The Defendant agrees that any financial records and information provided by the Defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

14. Except under circumstances where the Court, acting on its own, rejects this plea agreement (or functionally rejects it, as described below under the heading Violation or Rejection of Plea Agreement), the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement. The Court has not acted on its own if its rejection of the plea agreement occurs after the Defendant has expressly or implicitly suggested to the Court a desire or willingness to withdraw his or her plea or not to be bound by the terms of this plea agreement.

15. By signing this plea agreement, the Defendant waives the right to withdraw the Defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d) unless (1) the

court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5) or (2) the Defendant can show a fair and just reason as those terms are used in Rule 11(d)(2)(B) for requesting the withdrawal.

RESTITUTION

16. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A if applicable; if § 3663A is not applicable, the Court will enter an order of restitution pursuant to 18 U.S.C §§ 3663 and 3664.

17. In this case, the Defendant agrees to pay restitution in the total principal amount of \$20,790.54, which is payable to the United States District Court Clerk. No later than July 1 of each year after sentencing, until restitution is paid in full, the Defendant shall provide the Asset Recovery Unit, United States Attorney's Office, P.O. Box 607, Albuquerque, New Mexico 87103, (1) a completed and signed financial statement provided to the Defendant by the United States Attorney's Office and/or the United States Probation Office and (2) a copy of the Defendant's most recent tax returns.

FORFEITURE

18. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offense(s) in this case. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about

which the Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

19. The Defendant voluntarily and immediately agrees to the administrative, civil, or criminal forfeiture to the United States all of the Defendant's right, title, and interest in the following assets and properties:

- a. \$14,820 in United States currency seized from Pholopater Faltas during the execution of a search warrant at his residence on or about October 7, 2020; and
- b. Approximately \$1,310.54 in United States currency tendered to the United States Secret Service by B.P. on or about November 5, 2020 from an account in B.P.'s name that had previously been controlled by the Defendant.

20. The Defendant agrees to fully assist the United States in the forfeiture of the above-described property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to execution of any documents necessary to transfer the Defendant's interest in the above-described property to the United States.

21. The Defendant agrees to waive the right to notice of any forfeiture proceeding involving the above-described property.

22. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether

constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States or any State or its subdivisions.

23. The Defendant agrees that forfeiture of the aforementioned property as set forth in this agreement shall not be deemed an alteration of the Defendant's sentence. Forfeiture of the Defendant's property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the Defendant in addition to forfeiture. However, it is understood by the Defendant that the government may, in its sole discretion, recommend to the Attorney General that any of the forfeited proceeds be remitted or restored to the eligible victims of the offense, pursuant to 18 U.S.C. § 981(e), 28 C.F.R Pt. 9, and other applicable law, it being understood that the United States Attorney's Office has authority only to request such relief and that the final decision of whether to grant relief rests with the Department of Justice, which will make its decision in accordance with applicable law. The Defendant further expressly understands that one of the factors to be considered by the Department of Justice in approving any such restoration request is whether or not the Defendant has other assets with which he could pay the restitution judgment and the Defendant shall have no recourse in the event the restoration request is denied.

IMMIGRATION REMOVAL AND OTHER IMMIGRATION CONSEQUENCES

24. The Defendant recognizes that pleading guilty may have consequences with respect to the Defendant's immigration status if the Defendant is not a 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.

WAIVER OF APPEAL RIGHTS AND POST-CONVICTION RIGHTS

25. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence imposed in conformity with this Fed. R. Crim. P. 11(c)(1)(C) plea agreement, as well as any order of restitution entered by the Court. This waiver extends to any challenge to the manner in which the sentence was determined or imposed, including the district court's authority to make findings supporting the sentence.

26. The Defendant also waives the right to appeal any sentence imposed below or within the Guideline range upon a revocation of supervised release in this cause number but may nonetheless appeal the determination of the revocation Guideline range.

27. The Defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a).

28. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence pursuant to 28 U.S.C. §§ 2241, 2255, or any other extraordinary writ, except on the issue of defense counsel's ineffective assistance.

GOVERNMENT'S ADDITIONAL AGREEMENT

29. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

30. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

31. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement and any addenda). The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OR REJECTION OF PLEA AGREEMENT

32. The Defendant agrees that if the Court finds that the Defendant has violated any provision of this agreement, the United States may declare this agreement null and void. In such a case, or where the Court has rejected the plea agreement or has functionally rejected it by failing to accept the agreement within six months of its entry (except where the United States, in its sole discretion, agrees to an extension of that time) the United States is released from its obligations under the plea agreement and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

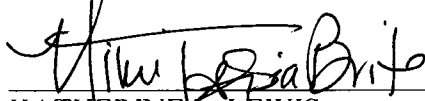
33. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$1,000 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

34. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

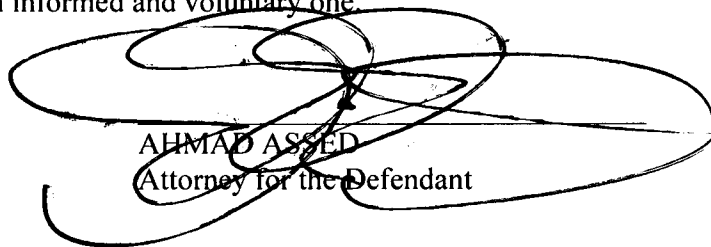
AGREED TO AND SIGNED this 15th day of August, 2024.

ALEXANDER M.M. UBALLEZ
United States Attorney



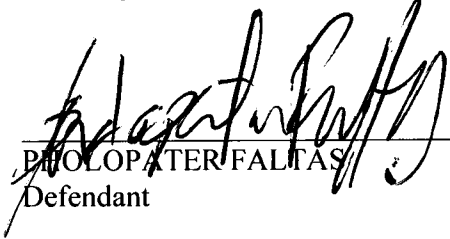
KATHERINE L. LEWIS
Assistant United States Attorney
201 3rd St. NW, Suite 900
Albuquerque, New Mexico 87102
(505) 346-7274

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. In addition, I have explained to my client the elements to each offense to which she/he is pleading guilty. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



AHMAD ASSED
Attorney for the Defendant

I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.



PAOLO PATER FALGAS
Defendant