UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
At Chattanooga

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:21-cr-069
Judge Atchley

v.

DONNA J. CLARK,

Defendant.

ADDENDUM TO AMENDED PLEA AGREEMENT

The defendant, Donna Clark, the defendant's attorney, Gianna Maio, and the United States Attorney for the Eastern District of Tennessee have agreed to the following terms set forth below, which are intended to replace paragraph 6 of the Amended Plea Agreement, filed December 22, 2021. (Doc. No. 18)

An arrest warrant was issued on August 6, 2021, and Ms. Clark turned herself in on August 9, 2021. (Doc. No. 12) Ms. Clark was detained in the courthouse prior to her initial appearance before Magistrate Judge Steger. Judge Steger released Ms. Clark on a $30,000 appearance bond. (Doc. Nos. 8, 9, 11) Thus, she has a day of incarceration to her credit.

On January 19, Ms. Clark entered a plea of guilty to one count of wire fraud in violation of 18 U.S.C. §1343. (Doc. No. 21) Ms. Clark entered a guilty plea pursuant to an Amended Plea Agreement. (Doc. No. 18). In that plea agreement, the parties agreed upon a sentence of three years of probation pursuant to Federal Rule of Criminal Procedure Rule 11(c)(1)(C). (Doc. No. 18, ¶ 6)

The statutory maximum sentence for wire fraud which impacts a financial institution is 30 years, which makes it a Class B felony. 18 U.S.C. §1343, 18 U.S.C. §3559. Ms. Clark's offense impacted a financial institution. 18 U.S.C. §3561(a)(1) bars a sentence of probation for individuals convicted of Class A or B felonies. Despite the statutory prohibition, numerous courts have authorized sentences of one day time served, followed by a period of supervised release, for defendants convicted of Class A and B felonies. *See U.S. v. Musgrave,* 647 Fed.Appx. 529 (6th Cir. 2016)(sentence of one day of imprisonment and five years of supervised release with 24 months of home confinement upheld for defendant convicted of wire fraud, bank fraud, and conspiracy to commit wire and bank fraud and to make false statements to a financial institution); *U.S. v. Jaradat,* 512 Fed.Appx. 612 (7th Cir. 2013)(defendant convicted of wire and mail fraud sentenced to one day of imprisonment followed by three years of supervised release, with 12 months served on home confinement), *U.S. v. Pits,* 319 Fed.Appx. 207 (4th Cir. 2009)(defendant convicted of bank fraud, a class B felony, sentenced to one day of imprisonment followed by five years of supervised release).

Accordingly, Ms. Clark and the United States are in agreement that Ms. Clark should be sentenced to time served, followed by three years of supervised release, pursuant to Rule 11 (c)(1)(C). Additionally, the Court may impose any lawful fine(s) and special assessment fees as required by law, and order forfeiture as applicable and restitution as appropriate. In the event that the Court declines to accept this agreement, either party will be free to withdraw from the plea agreement.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

By: /s/ *Gianna Maio*
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