United States Department of Justice

United States Attorney
Southern District of West Virginia

Robert C. Byrd United States Courthouse
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Charleston, WV 25301

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FILED
APR - 5 2024
RORY L. PERRY II, CLERK
U.S. District Court
Southern District of West Virginia

March 25, 2024

Rachel Zimarowski
Federal Public Defender
300 Virginia Street East Rm 3400
Charleston, West Virginia 25301

Re: United States v. Lydia Spencer
Criminal No. 2:23-cr-0118 (USDC SDWV)
Criminal No. 2:24-cr-0053 (USDC SDWV)

Dear Ms. Zimarowski:

This will confirm our conversations with regard to your client, Lydia Spencer (hereinafter "Ms. Spencer"). As a result of these conversations, it is agreed by and between the United States and Ms. Spencer as follows:

1. **PENDING CHARGES.** Ms. Spencer is charged in a single-count indictment with a violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(8)(felon in possession of a firearm).

2. **CHARGING AGREEMENT.** Ms. Spencer agrees to waive her right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a single-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

3. **RESOLUTION OF CHARGES.** Ms. Spencer will plead guilty to a violation of 18 U.S.C. § 1349 (conspiracy to commit bank fraud) as charged in said information. Following final disposition, the United States will move to dismiss the single-count indictment in 2:23-cr-0118 as to Ms. Spencer.

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4. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Ms. Spencer will be exposed by virtue of this guilty plea is as follows:

(a) Imprisonment for a period of 30 years;

(b) A fine of $1,000,000, or twice the gross pecuniary gain or loss, whichever is greater.

(c) A term of supervised release of 5 years;

(d) A mandatory special assessment of $100 pursuant to 18 U.S.C. § 3013; and

(e) An order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664.

5. **SPECIAL ASSESSMENT.** Ms. Spencer has submitted certified financial statements to the United States reflecting that she is without sufficient funds to pay the special assessment due upon conviction in this case. Ms. Spencer agrees that, if incarcerated, she will join the Inmate Financial Responsibility Program, earnings from which will be applied toward payment of the special assessment.

6. **RESTITUTION.** Notwithstanding the offense of conviction, Ms. Spencer agrees that she owes restitution in the amount of at least $31,250 and agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Ms. Spencer further agrees as follows:

(a) Ms. Spencer agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.

(b) Ms. Spencer will fully complete and execute, under oath,

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a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.

(c) Ms. Spencer agrees not to dispose of, transfer or otherwise encumber any real or personal property which she currently owns or in which she holds an interest.

7. **PAYMENT OF MONETARY PENALTIES.** Ms. Spencer authorizes the Financial Litigation Program in the United States Attorney's Office to obtain a credit report from any major credit reporting agency prior to sentencing in order to assess her financial condition for sentencing purposes. Ms. Spencer agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Ms. Spencer further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

Ms. Spencer authorizes the United States, through the Financial Litigation Program, to submit any unpaid criminal monetary penalty to the United States Treasury for offset in accordance with the Treasury Offset Program, regardless of the defendant's payment status or history at that time.

In addition to any payment ordered by the Court, Ms. Spencer shall pay all monies received from any source other than earned income, including but not limited to, lottery winnings, gambling proceeds, judgments, inheritances, and tax refunds, toward the court ordered restitution or fine.

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Ms. Spencer agrees that if she retains counsel or has appointed counsel in response to the United States' efforts to collect any monetary penalty, she shall immediately notify the United States Attorney's Office, Attention: Financial Litigation Program, 300 Virginia Street E., Suite 4000, Charleston, West Virginia 25301, in writing and shall instruct her attorney to notify FLP immediately of her representation.

8. **COOPERATION.** Ms. Spencer will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Ms. Spencer may have counsel present except when appearing before a grand jury. Further, Ms. Spencer agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in subsequent indictments or informations.

9. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Ms. Spencer, and except as expressly provided for in paragraph eleven below, nothing contained in any statement or testimony provided by her pursuant to this agreement, or any evidence developed therefrom, will be used against her, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

10. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Ms. Spencer for any violations of federal or state laws. The United States reserves the right to prosecute Ms. Spencer for perjury or false statement if such a situation should occur pursuant to this agreement.

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11. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Ms. Spencer stipulate and agree that the facts comprising the offense of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."

Ms. Spencer agrees that if she withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by her, and she is subsequently tried for her conduct alleged in the information, as more specifically described in the Stipulation of Facts, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Ms. Spencer or of any of her witnesses, or in rebuttal of any testimony introduced by her or on her behalf. Ms. Spencer knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right she has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Ms. Spencer understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

12. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Ms. Spencer knowingly and voluntarily waives her right to seek appellate review of her conviction and of any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742(a), except that the defendant may appeal any sentence that exceeds the maximum penalty prescribed by statute. Ms. Spencer also knowingly and voluntarily waives any right to seek appellate review of any

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claim or argument that (1) the statutes of conviction 18 U.S.C. § 1349 is unconstitutional, and (2) Ms. Spencer conduct set forth in the Stipulation of Facts (Plea Agreement Exhibit B) does not fall within the scope of 18 U.S.C. § 1349.

The United States also agrees to waive its right to appeal any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever, including any ground set forth in 18 U.S.C. § 3742(b), except that the United States may appeal any sentence that is below the minimum penalty, if any, prescribed by statute.

Ms. Spencer also knowingly and voluntarily waives the right to challenge her guilty plea and conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. **WAIVER OF FOIA AND PRIVACY RIGHT.** Ms. Spencer knowingly and voluntarily 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 any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

(a) Inform the Probation Office and the Court of all relevant

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facts and conduct;

(b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);

(c) Respond to questions raised by the Court;

(d) Correct inaccuracies or inadequacies in the presentence report;

(e) Respond to statements made to the Court by or on behalf of Ms. Spencer;

(f) Advise the Court concerning the nature and extent of Ms. Spencer's cooperation; and

(g) Address the Court regarding the issue of Ms. Spencer's acceptance of responsibility.

15. **VOIDING OF AGREEMENT.** If either the United States or Ms. Spencer violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

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16. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Ms. Spencer in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Ms. Spencer in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

WILLIAM S. THOMPSON
United States Attorney

By: Holly J. Wilson

Holly J. Wilson
Assistant United States Attorney

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I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this nine-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney have advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

Lydia Spencer
Defendant

3/29/24
Date Signed

Rachel Zimarowski
Counsel for Defendant

3/29/24
Date Signed

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON

UNITED STATES OF AMERICA

v. **CRIMINAL NO. __________**
18 U.S.C § 1349

LYDIA SPENCER

I N F O R M A T I O N

The United States Attorney Charges:

At all times material to this Information:

The Paycheck Protection Program

1. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

2. In order to obtain a PPP loan, a qualifying business submitted a PPP loan application, which was signed by an authorized representative of the business. The PPP loan application required

the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application (Small Business Administration ("SBA") Form 2483), the small business (through its authorized representative) was required to provide, among other things, its: (a) average monthly payroll expenses and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation confirming their payroll expenses.

3. A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies. While it was the participating lender that issued the PPP loan, the loan was 100% guaranteed by the SBA. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

4. PPP loan proceeds were required to be used by the business on certain permissible expenses-payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the

business spent the loan proceeds on these expense items within a designated period of time and used a defined portion of the PPP loan proceeds on payroll expenses.

Relevant Entities and the Defendant

5. Stride Bank, N.A. was a financial institution as defined in 18 U.S.C. § 20 headquartered in Enid, Oklahoma.

6. Lenders 1 and 2 were financial institutions as defined by 18 U.S.C. § 20 that participated as lenders in the PPP.

7. Les Prints was a sole proprietorship with a registered principal office address in Charleston, Kanawha County, West Virginia. Its business purpose was the creation of custom t-shirts and other pieces of clothing.

8. Defendant LYDIA SPENCER was a resident of Charleston, Kanawha County, West Virginia, who was the sole proprietor of and was the registered agent for Les Prints.

9. Defendant LYDIA SPENCER maintained a personal bank account held by Stride Bank, N.A.

CONSPIRACY TO COMMIT BANK FRAUD

10. From in or about no later than April 2021 through in or about June 21, 2021, at or near Charleston, Kanawha County, West Virginia, in the Southern District of West Virginia, and elsewhere, defendant LYDIA SPENCER did knowingly and intentionally conspire and agree with others, both known and unknown to the United States

Attorney, to devise a scheme and artifice to defraud financial institutions, namely Lenders 1 and 2, and to obtain moneys, funds, credits, assets, securities, or other property owned by, or under, the custody or control of, financial institutions, namely Lenders 1 and 2, by means of false or fraudulent pretenses, representations, or promises, in violation of 18 U.S.C. § 1344.

Purpose of the Conspiracy

11. It was the purpose of the conspiracy for defendant LYDIA SPENCER and her co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of materially false and fraudulent applications for PPP loans to financial institutions; (b) paying and receiving kickbacks in return for submitting false and fraudulent loan applications; and (c) diverting fraud proceeds for the personal use of defendant LYDIA SPENCER and her co-conspirators.

Manner and Means of the Conspiracy

It was in furtherance of the conspiracy that:

12. From no later than April 8, 2021, defendant LYDIA SPENCER, from a location within the Southern District of West Virginia, provided personal and bank account information to a co-conspirator for the purpose of obtaining fraudulent PPP loans on behalf of Les Prints.

13. On or about April 8, 2021, defendant LYDIA SPENCER and her co-conspirators submitted and caused to be submitted one fraudulent PPP loan application on Les Prints' behalf to Lender 1.

14. Additionally, on or about April 8, 2021, defendant LYDIA SPENCER and her co-conspirators submitted and caused to be submitted one fraudulent PPP loan application on Les Prints' behalf to Lender 2.

15. The PPP loan applications submitted and caused to be submitted by defendant LYDIA SPENCER and her co-conspirators contained materially false and fraudulent information, including Les Prints' expenses and gross annual income. These figures did not accurately represent Les Prints' true operations and were inflated, which caused Les Prints to obtain a loan Les Prints would not have been qualified to receive, or to receive a loan in an amount higher than it would qualify for had the applications been accurate.

16. Further, as part of the loan applications, defendant LYDIA SPENCER and her co-conspirators submitted and caused to be submitted materially false and fraudulent Internal Revenue Service ("IRS") Forms, including Forms 1040 (Profit or Loss from Business), that were created solely for purposes of applying for the PPP loans and were never submitted to the IRS.

17. Based on the applications submitted by defendant LYDIA SPENCER and her co-conspirators, Lender 1 and Lender 2 approved the fraudulent loan applications.

18. As a result, on or about April 30, 2021, Lender 1 disbursed $15,625 to defendant LYDIA SPENCER's bank account maintained by Stride Bank, N.A.

19. Additionally, on or about June 17, 2021, Lender 2 disbursed $15,625 to defendant LYDIA SPENCER's bank account maintained by Stride Bank, N.A.

20. Between on or about May 3, 2021, and on or about June 21, 2021, defendant LYDIA SPENCER paid a co-conspirator monies from the loans proceeds for facilitating and obtaining the two fraudulent PPP loans on behalf of Les Prints. Defendant LYDIA SPENCER spent the remainder of the PPP loan proceeds on a variety of personal expenses unrelated to Les Prints.

In violation of Title 18, United States Code, Section 1349.

UNITED STATES OF AMERICA

WILLIAM S. THOMPSON
United States Attorney

By: Holly J. Wilson
Holly J. Wilson
Assistant United States Attorney

PLEA AGREEMENT EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v. CRIMINAL NO. ______________

LYDIA SPENCER

STIPULATION OF FACTS

The United States and LYDIA SPENCER (hereinafter "I," "me," and "my") stipulate and agree that the facts comprising the offense of conviction include the following:

Coronavirus Relief Background

I agree that the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. The CARES Act authorized the Small Business Administration ("SBA") to provide forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

I agree that the PPP allowed qualifying small businesses and other organizations to receive PPP loans. Businesses were required to use PPP loan proceeds to cover payroll costs, interest on mortgages, rent and utilities. The PPP allowed interest and principal on the PPP loans to be entirely forgiven if the businesses spent the loan proceeds to cover these expenses within a designated time and used a certain specified percentage of the PPP loan proceeds on payroll expenses.

I agree that to obtain a PPP loan, a qualifying business was required to submit a PPP loan application. The PPP loan application required the small business (through its authorized representative) to acknowledge the program rules and make affirmative certifications that the small business was eligible to obtain the PPP loan. In addition, businesses applying for a PPP loan were required to provide documentation showing their prior gross income from either 2019 or 2020. Applicants also had to certify that the small business was in operation on February 15, 2020.

I agree that a PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were 100% guaranteed by the SBA.

<u>Factual Basis for Plea</u>

At all relevant times, I resided in Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia. Additionally, at all relevant times, I was the sole proprietor of a custom clothing business, Les Prints, that had its principal office in Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia.

Throughout 2021, I maintained a personal bank account with Stride Bank, N.A. ("Stride"). I agree that Stride was a financial institution within the meaning of 18 U.S.C. § 20 that was headquartered in Oklahoma. Further, I agree that Lenders 1 and 2 were financial institutions within the meaning of 18 U.S.C. § 20 that participated in the PPP by funding loans.

In or around April 2021, in the Southern District of West Virginia, I knowingly conspired with S.W., K.S., an individual I know as K.M., and others to obtain fraudulent PPP loans.

In the spring of 2021, S.W. recruited me to participate in a scheme to obtain fraudulent PPP loans. She explained to me that I would provide my personal and bank account information to her, and K.S. and/or K.M. would apply for a fraudulent PPP loan in my business's name. Once I received the loan proceeds, I was to remit a portion to K.S. I agreed to participate.

In or around April 2021, I gave my personal and banking information to S.W. for the purpose of carrying out the scheme. I knew at that time that my personal and bank account information would be used by K.S. to submit fraudulent PPP loan applications on behalf of Les Prints.

On April 8, 2021, K.S. submitted PPP loan applications on Les Prints' behalf to Lenders 1 and 2. The applications contained materially false information in at least two respects. First, the applications falsely represented that Les Prints received $75,000 in gross income during 2020. Second, the applications attached fraudulent Schedule C forms, Profit or Loss from Business Forms("IRS Form 1040s"), for the year 2020. The IRS Form 1040s falsely stated that Les Prints had earned $75,000 in gross income during 2020. Les Prints never earned $75,000 in gross income in one year. The IRS Form 1040s were also never submitted by me to the IRS; they were created for the sole purpose of obtaining fraudulent PPP loans. This information qualified Les Prints for a loan amount it otherwise would not have been qualified to receive.

Lenders 1 and 2 approved the fraudulent applications.

On April 30, 2021, I received a $15,625 ACH transfer disbursed by Lender 1, and the funds were electronically deposited in my Stride bank account.

On June 17, 2021, I received a $15,625 ACH transfer disbursed by Lender 2, and the funds were electronically deposited in my Stride bank account.

In total, I fraudulently obtained $31,~~650~~ 250 from Lenders 1 and 2.

Between May 3, 2021, and June 21, 2021, I used CashApp to transfer $4,000 to K.S. from the fraudulent PPP loan proceeds, as compensation for facilitating the loans, in accordance with the original agreement. I initiated these transfers while in the Southern District of West Virginia. The transfers were as follows:

Date	**Total**	**Subject**	**Sender**	**Recipient**
2021-06-21 15:13:25 UTC	USD 1,000.00	marketing	Lydia Spencer	K.S.
2021-05-17 15:56:29 UTC	USD 1,000.00	marketing	Lydia Spencer	K.S.
2021-05-10 14:10:36 UTC	USD 1,000.00	marketing	Lydia Spencer	K.S.
2021-05-03 16:06:01 UTC	USD 1,000.00	marketing	Lydia Spencer	K.S.

I labeled these transfers with the subject "marketing" in an attempt to obscure the nature of the funds. K.S. never did any work for me or Les Prints. I spent the remainder of the loan proceeds on personal expenses.

I had conversations with other individuals who also participated in the scheme. I knew that K.S. applied for fraudulent PPP loans in those individuals' names and that those individuals received fraudulent PPP loans as a result.

* * *

This Stipulation of Facts does not contain each and every fact known to defendant and to the United States concerning her involvement and the involvement of others in the charges set forth in the Information.

Stipulated and agreed to:

Lydia Spencer
LYDIA SPENCER
Defendant

3-29-24
Date

RACHEL ZIMAROWSKI
Counsel for Defendant

3-29-24
Date

Holly J. Wilson
HOLLY WILSON
Assistant United States Attorney

4-1-24
Date