Vanessa R. Waldref
United States Attorney
Eastern District of Washington
Freida K. Zimmerman
Jeremy J. Kelley
Assistant United States Attorney
Post Office Box 1494
Spokane, WA 99210-1494
Telephone: (509) 353-2767

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
May 21, 2025
SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

KELLY JO DRIVER,

Defendant.

Case No.: 4:24-CR-06004-SAB-1

Plea Agreement

Plaintiff, United States of America, by and through Vanessa R. Waldref, United States Attorney the Eastern District of Washington, and Frieda K. Zimmerman and Jeremy J. Kelley, Assistant United States Attorneys for the Eastern District of Washington, and Defendant KELLY JO DRIVER ("Defendant"), both individually and by and through Defendant's counsel, Jennifer Barnes, agree to the following Plea Agreement.

1. <u>Guilty Plea and Maximum Statutory Penalties</u>

Defendant agrees to enter a plea of guilty to Count 8 of the Indictment filed on March 6, 2024, which charges Defendant with making and presenting a false and fraudulent claim to the Small Business Administration, in violation of 18 U.S.C. § 287, a Class D felony.

Defendant understands that the following potential penalties apply:

a. a term of imprisonment of not more than 5 years;

b. a term of supervised release of up to 3 years;

c. a fine of no more than $250,000 or not more than twice the gross gain or gross loss, whichever is greater;

d. restitution; and

e. a $100 special penalty assessment.

2. Supervised Release

Defendant understands that if Defendant violates any condition of Defendant's supervised release, the Court may revoke Defendant's term of supervised release, and require Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, up to the following terms:

a. 5 years in prison if the offense that resulted in the term of Supervised Release is a class A felony;

b. 3 years in prison if the offense that resulted in the term of Supervised Release is a class B felony; and/or

c. 2 years in prions if the offense that resulted in the term of Supervised Release is a class C or D felony.

Accordingly, Defendant understands that if Defendant commits one or more violations of supervised release, Defendant could serve a total term of incarceration greater than the maximum sentence authorized by statute for Defendant's offense or offenses of conviction.

3. The Court is Not a Party to this Plea Agreement

The Court is not a party to this Plea Agreement and may accept or reject it. Defendant acknowledges that no promises of any type have been made to Defendant with respect to the sentence the Court will impose in this matter.

Defendant understands the following:

a. sentencing is a matter solely within the discretion of the Court;

b. the Court is under no obligation to accept any recommendations made by the United States or Defendant;

c. the Court will obtain an independent report and sentencing recommendation from the United States Probation Office;

d. the Court may exercise its discretion to impose any sentence it deems appropriate, up to the statutory maximum penalties;

e. the Court is required to consider the applicable range set forth in the United States Sentencing Guidelines, but may depart upward or downward under certain circumstances; and

f. the Court may reject recommendations made by the United States or Defendant, and that will not be a basis for Defendant to withdraw from this Plea Agreement or Defendant's guilty plea.

4. <u>Potential Immigration Consequences of Guilty Plea</u>

If Defendant is not a citizen of the United States, Defendant understands the following:

a. pleading guilty in this case may have immigration consequences;

b. a broad range of federal crimes may result in Defendant's removal from the United States, including the offense to which Defendant is pleading guilty;

c. removal from the United States and other immigration consequences are the subject of separate proceedings; and

d. no one, including Defendant's attorney or the Court, can predict with absolute certainty the effect of a federal conviction on Defendant's immigration status.

Defendant affirms that Defendant is knowingly, intelligently, and voluntarily pleading guilty as set forth in this Plea Agreement, regardless of any immigration consequences that Defendant's guilty plea may entail.

5. <u>Waiver of Constitutional Rights</u>

Defendant understands that by entering this guilty plea, Defendant is knowingly and voluntarily waiving certain constitutional rights, including the following:

a. the right to a jury trial;

b. the right to see, hear and question the witnesses;

c. the right to remain silent at trial;

d. the right to testify at trial; and

e. the right to compel witnesses to testify.

While Defendant is waiving certain constitutional rights, Defendant understands that Defendant retains the right to be assisted by an attorney through the sentencing proceedings in this case and any direct appeal of Defendant's conviction and sentence, and that an attorney will be appointed at no cost if Defendant cannot afford to hire an attorney. Defendant understands and agrees that any defense motions currently pending before the Court are mooted by this Plea Agreement, and Defendant expressly waives Defendant's right to bring any additional pretrial motions.

6. <u>Waiver of Inadmissibility of Statements:</u>

Pursuant to Federal Rule of Criminal Procedure 11(f), Defendant waives the inadmissibility of any statements made by Defendant in the course of plea discussions with the United States. This waiver shall apply if Defendant withdraws Defendant's guilty plea or breaches this Plea Agreement.

Defendant acknowledges that any statements made by Defendant in the course of plea discussions in this case will be admissible against Defendant in the United States' case-in-chief if Defendant withdraws from, or breaches, this Plea Agreement, in any manner.

7. Elements of the Offense

The United States and Defendant agree that in order to convict Defendant of Making and Presenting a False, Fictitious, and Fraudulent Claim, in violation of 18 U.S.C. § 287, the United States would have to prove the following beyond a reasonable doubt.

a. *First*, on or about October 21, 2020, in the Eastern District of Washington and elsewhere, Defendant KELLY JO DRIVER made or presented a claim against the Unites States Small Business Administration;
b. *Second*, the claim was fraudulent;
c. *Third*, the fraudulent matter was material; that is, it had a natural tendency to influence, or was capable of influencing, the United States Small Business Administration to part with money;
d. *Fourth*, Defendant KELLY JO DRIVER knew the claim was fraudulent at the time she made or presented the claim; and
e. *Fifth*, Defendant KELLY JO DRIVER acted with the intent to defraud, that is, the intent to deceive and cheat.

8. Factual Basis and Statement of Facts

The United States and Defendant stipulate and agree that the following facts are accurate; that the United States could prove these facts beyond a reasonable doubt at trial; and that these facts constitute an adequate factual basis for Defendant's guilty plea. The United States and Defendant agree that this statement of facts does not preclude either party from presenting and arguing, for sentencing purposes, additional facts that are relevant to the Sentencing Guidelines computation or sentencing, unless otherwise prohibited in this Plea Agreement.

Paycheck Protection Program and Economic Injury Disaster Loans

The Coronavirus Aid, Relief, and Economic Security Act ("CARES" Act) was a federal law enacted on March 27, 2020, 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 other certain expenses, through a program referred to as the Paycheck Protection Program ("PPP").

In order to obtain a PPP, a qualifying business was required to submit a PPP application signed by an authorized representative of the business. The PPP 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 funding. In the PPP application, the applicant (through its authorized representative) was required to state, among other things: (a) its average monthly payroll expenses; and (b) its number of employees. If the applicant had no employees other than the owner, the applicant was required to provide the gross income amount from a 2019 or 2020 IRS Form 1040, Schedule C. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. Additionally, the applicant was required to certify that they were in operation as of February 15, 2020. The applicant was also required to certify that the information in the application was true and correct to the best of the applicant's knowledge.

A business's PPP application was received and processed, in the first instance, by a participating lender. If a PPP application was approved, the participating lender funded the PPP using its own monies. Data from the application, including information about the borrower, the total amount of the loan, the listed number of employees, and the gross income amount, was transmitted by the lender to the Small Business Administration ("SBA"), an agency of the United States, in the course of processing the loan.

PPPs were forgivable if the borrower met all the requirements of the program. These requirements included that at least 60% of the PPP funds were used for payroll, while the remaining 40% could be used for payroll, mortgage interest, rent, and utilities. The funds were not to be used for personal expenses. In seeking forgiveness, the borrower was required to certify that they used the funds as required. PPP forgiveness applications were received through a cloud-based platform (Summit) through the AWS GOV cloud server in Oregon. SBA transmitted the forgiveness payments to the PPP lender through the FMS servers in Sterling, Virginia.

In addition to the PPP, the CARES act also authorized COVID-19 related funding for the Economic Injury Disaster Loan (EIDL) program. EIDL is an SBA program that provides low-interest funding to small businesses, renters, and homeowners affected by declared disasters. The EIDL program also offered Targeted EIDL Advance and Supplemental Targeted Advance grants for certain qualifying businesses that did not have to be repaid.

In order to obtain an EIDL and advance, a qualifying business was required to submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period was the year preceding January 31, 2020. The applicant was also required to certify that all the information in the application was true and correct to the best of the applicant's knowledge.

The amount of an EIDL, if the application was approved, was determined based, in part, on the information provided in the application about employment, revenue, and cost of goods, as set forth above. Any funds issued under an EIDL or Advance were issued directly by the SBA. EIDL funds could be used as working capital for a business, such as for payroll expenses, employee sick leave, production costs, and business obligations and expenses, such as business debts, office rent, and office mortgage payments. If the applicant also obtained a loan under the Paycheck

Protection Program, the EIDL funds could not be used for the same purpose as the Paycheck Protection Program funds.

EIDL applications were received in cloud-based platforms. The location of the server through which the EIDL application was submitted was based on the date the application was processed by SBA and the application number. EIDL Targeted Advance and Supplemental Advance applications were submitted through Rapid Finance systems that utilizes Microsoft cloud-based servers located in Des Moines, Iowa. EDIL disbursements were initiated by the SBA Denver Finance Center located in Denver, Colorado, which transmitted the payment information through the FMS system to the Department of Treasury server located in the State of Virginia.

<u>The Conspiracy</u>

During all relevant times, Defendant KELLY JO DRIVER was a resident of South Carolina. Beginning no later than in or about March 2020, and continuing through at least December 2021, in the Eastern District of Washington and elsewhere, Defendant, together with co-defendants DAVID KURT SCHNEIDER and LEIF GERALD LARSEN, engaged in a scheme and conspiracy to defraud the Small Business Administration (SBA) and participating PPP lenders, by applying for EIDL and PPP funds to which they were not entitled by making materially false and fraudulent representations, statements, and promises concerning the SCHNEIDER's businesses, Solar Mobility LLC, RealNZ Water LLC, and Tempest Tactical Solutions LLC, as well as LARSEN's business Larsen Firearms, all of which were registered and located in Washington State.

Specifically, Defendant, SCHNEIDER, and LARSEN made false and fraudulent statements to the SBA and participating PPP lender banks about the gross revenues, cost of goods, number of employees, and payroll costs for SCHNEIDER and LARSEN's businesses. To support these false assertions, Defendant, SCHNEIDER, and LARSEN created false and fraudulent payroll records and IRS

Form 941s purporting to show payroll paid to employees. These false and fraudulent documents were submitted to participating PPP lenders to induce them to approve the PPP applications submitted by Defendant, SCHNEIDER, and LARSEN. As part of the conspiracy, Defendant, SCHNEIDER, and LARSEN transmitted and caused to be transmitted, by means of wire communications in interstate commerce, writings, signals, and sounds, to and from the Eastern District of Washington. For her participation in the conspiracy, SCHNEIDER and LARSEN paid Defendant approximately 10% of the funds they received.

<u>Solar Mobility LLC</u>

On or about March 31, 2020, SCHNEIDER created EIDL Application No. 3600237451 in the name of Solar Mobility LLC. At that time, SCHNEIDER represented that Solar Mobility LLC had zero employee as well as $0 in gross revenue and $0 in costs of goods sold in the twelve months preceding January 31, 2020. Based upon these representations, the SBA disbursed $1,000 to SCHNEIDER on June 19, 2020.

On or about July 19, 2020, Defendant and SCHNEIDER created a second EIDL application, Application No. 3311313620 in the name of Solar Mobility LLC, which was submitted to the SBA servers in Des Moines, Iowa, via interstate wires from Defendant in South Carolina. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that Solar Mobility LLC had $45,000 in gross revenues and $13,000 in cost of goods for the twelve-month period preceding January 31, 2020, and that Solar Mobility LLC had five employees. In fact, as SCHNEIDER represented in March 2020, Solar Mobility LLC had no gross revenue in the twelve months preceding 2020 and no employees other than SCHNEIDER. Defendant and SCHNEIDER certified in the application that this information was true and correct. These representations and certification were materially false and fraudulent and were made to induce the SBA to disburse EIDL funds to which

SCHNEIDER and Solar Mobility LLC were not eligible. The SBA declined to fund this EIDL application.

On or about August 6, 2020, Defendant and SCHNEIDER submitted a PPP application to Community First Bank in the name of Solar Mobility LLC. Community First Bank is a federally-insured financial institution headquartered in Kennewick, Washington. The application was submitted to Community First Bank via interstate wires from Defendant in South Carolina. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that Solar Mobility had five employees and an average monthly payroll of $23,747. In support of the application, Defendant and SCHNEIDER submitted false and fraudulent payroll records, which purported to show wages paid to employees. In the application, Defendant and SCHNEIDER certified that the information in the application and supporting documents were true and accurate. However, the certification and representations in the application and supporting documents were materially false and fraudulent and made to induce Community First Bank to disburse PPP funds to which SCHNEIDER and Solar Mobility LLC were not eligible. Based upon the false and fraudulent information, Community First Bank approved the PPP application, which was assigned PPP No. 49653282-04 by the SBA. On August 17, 2020, Community First Bank disbursed $59,300 to SCHNEIDER. SCHNEIDER then paid Defendant $5,000 via an interstate wire transfer of funds to her Pinnacle Bank account in South Carolina. SCHNEIDER used the remaining funds for personal expenses, not payroll as agreed to in the PPP application.

On or about March 2, 2021, Defendant and SCHNEIDER submitted a PPP forgiveness application to Community First Bank, requesting forgiveness of the entire $59,300 disbursed. In the forgiveness application, Defendant and SCHNEIDER falsely and fraudulently represented that at the time of the initial PPP application Solar Mobility LLC had five employees, at the time of the forgiveness application Solar Mobility LLC had ten employees, and that Solar Mobility LLC had spent $218,500 in payroll costs between August 17, 2020, and December 31, 2020. This application was ultimately denied by Community First Bank. SCHNEIDER did not make any payments on PPP No. 49653282-04, which went into default. Community First Bank charged off the PPP No. 49653282-04, which was guaranteed by the SBA, shifting all losses to the SBA.

On or about January 15, 2021, Defendant and SCHNEIDER submitted a Second Draw PPP Application to Community First Bank in the name of Solar Mobility LLC. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that Solar Mobility LLC had ten employees, its average monthly payroll was $49,320, its 2020 fourth quarter gross receipts were $11,250, and its 2020 first quarter gross receipts were $28,000. In support of the application, Defendant and SCHNEIDER submitted false and fraudulent payroll reports and IRS From 941s purporting to show wages paid to Solar Mobility LLC employees. In the application, Defendant and SCHNEIDER sought payment of $123,300 in PPP funds.

When Community First Bank asked for bank records to confirm the payroll amounts listed, Defendant and SCHNEIDER sent them account statements from SCHNEIDER's Bank of America account in the name of Solar Mobility LLC. Those records show the only significant deposit into the account was from the first PPP funds received in August 2020, and reflected spending on personal purchases and large cash withdrawals. SCHNEIDER falsely told Community First Bank in an email, "Due to the uncertainty of the Pandemic and banks being closed because of exposure to Covid my employees wanted to be paid in cash, so we paid in cash and still filed our 941s accordingly." Community First Bank ultimately declined to fund the Second Draw PPP Application.

On March 12, 2021, Defendant and SCHNEIDER submitted another Second Draw PPP Application in the name of Solar Mobility LLC, this one to Bank of the West. Bank of the West is a federally-insured financial institution headquartered in San Francisco, California. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that Solar Mobility LLC had ten employees, a monthly payroll of $42,943, 2020 fourth quarter gross receipts of $21,251, and 2019 fourth quarter gross receipts of $49,731. In support of the application, Defendant and SCHNEIDER submitted false and fraudulent payroll reports and IRS Form 941s purporting to show wages paid by Solar Mobility LLC. Bank of the West declined to fund this application.

<u>Tempest Tactical Solutions LLC</u>

On or about October 21, 2020, Defendant and SCHNEIDER created EIDL Application No. 3315031326 in the name of Tempest Tactical Solutions LLC, which was submitted to the SBA servers in Des Moines, Iowa, via interstate wires from Defendant in South Carolina. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that Tempest Tactical Solutions LLC had four employees as well as $12,500 in gross revenues and $2,800 in cost of goods in the twelve months preceding January 31, 2020. In the application, Defendant and SCHNEIDER also falsely and fraudulently represented that Tempest Tactical Solutions LLC had been opened on January 12, 2020. In fact, SCHNEIDER only registered Tempest Tactical Solutions LLC with the Washington State Secretary of State on September 1, 2020, Tempest Tactical Solutions LLC had no functioning business operations, and SCHNEIDER only registered the company to apply for CARES Act funding. Defendant and SCHNEIDER certified in the application that the information provided was true and correct. These representations and certification were materially false and fraudulent and were made to induce the SBA to disburse EIDL funds for which SCHNEIDER and Tempest Tactical Solutions LLC were not eligible. The SBA declined to fund the requested EIDL because it determined Tempest Tactical Solutions LLC had only been formed in September 2020.

On January 15, 2021, Defendant and SCHNEIDER submitted a PPP application to Community First Bank in the name of Tempest Tactical Solutions

LLC via interstate wires from Defendant in South Carolina. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that Tempest Tactical Solutions had been in operation since February 15, 2020, had seven employees, and had monthly payroll expenses of $32,940. In support of the application, Defendant and SCHNEIDER submitted false and fraudulent payroll reports and IRS Form 941s purporting to show wages paid to employees by Tempest Tactical Solutions LLC. In the application, Defendant and SCHNEIDER certified that the information in the application and supporting documents were true and accurate. However, the certification and representations in the application and supporting documents were materially false and fraudulent and made to induce Community First Bank to disburse PPP funds to which SCHNEIDER and Tempest Tactical Solutions LLC were not eligible. The application sought payment of $82,250 in PPP funds. Community First Bank identified that Tempest Tactical Solutions LLC had only been formed in September 2020 and declined to fund the loan.

<u>RealNZ Water LLC</u>

On or about March 31, 2020, SCHNEIDER submitted EIDL Application No. 3600240545 to the SBA in the name of RealNZ Water LLC. At that time, he represented that RealNZ Water LLC had three employees as well as $100,000 in gross revenues and $50,000 in cost of goods sold in the twelve month-period preceding January 31, 2020. Based on these representations, SBA disbursed $3,000 in an EIDL advance grant and a further $22,000 in EIDL funds. On or about February 22, 2021, Defendant and SCHNEIDER submitted an application requesting a modification to this EIDL, as well as a Targeted Advance grant. The application was submitted to SBA servers in Des Moines, Iowa, via interstate wires from Defendant in South Carolina. In the Targeted Advance application, Defendant and SCHNEIDER falsely and fraudulently represented that RealNZ Water LLC had ten employees at the time of the application. Defendant and SCHNEIDER certified in the application that the information provided was true and correct. These representations and certification were materially false and fraudulent and were made to induce the SBA to disburse EIDL funding for which SCHNEIDER and RealNZ Water were not eligible. The SBA declined to modify the original EIDL or to provide further Targeted Advance funds.

On or about May 28, 2020, Defendant and SCHNEIDER submitted a PPP application to Bank of America in the name of RealNZ Water LLC. Bank of America is a federally-insured financial institution. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that RealNZ Water had three employees and an average monthly payroll of $23,000. In support of the application, Defendant and SCHNEIDER submitted false and fraudulent IRS Form 941s purporting to show wages paid to employees by RealNZ Water. In the application, Defendant and SCHNEIDER certified that the information in the application and supporting documents were true and accurate. However, the certification as well as representations in the application and supporting documents were materially false and fraudulent and made to induce Bank of America to disburse PPP funds for which SCHNEIDER and RealNZ Water were not eligible. The application sought payment of $65,000 in PPP funds. Based upon the false representations, Bank of America approved the application, which was assigned PPP No. 7812607800, and disbursed $59,366 to SCHNEIDER on June 4, 2020. On or about June 7, 2020, SCHNEIDER wrote and mailed to Defendant a check in the amount of $5,000 as payment for her assistance in obtaining the funds.

On or about February 18, 2021, Defendant and SCHNEIDER submitted a PPP Forgiveness Application to Bank of America, seeking to have the $59,366 disbursed for PPP No. 7812607800 forgiven. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that RealNZ Water LLC had five employees at the time of the initial PPP application and had ten employees at the time of the loan forgiveness application. Defendant and SCHNEIDER also falsely and fraudulently represented that RealNZ Water LLC had spent $59,366 on payroll costs between June 4, 2020, and November 18, 2020. In support of the forgiveness application, Defendant and SCHNEIDER submitted false and fraudulent IRS Form 941s purporting to show wages paid to employees by RealNZ Water LLC. This loan forgiveness application was not approved.

On or about June 14, 2021, Defendant and SCHNEIDER submitted a second PPP forgiveness application. In this application, Defendant and SCHNEIDER falsely and fraudulently represented that RealNZ Water LLC had five employees at the time of the initial PPP application, ten employees at the time of the PPP forgiveness application, and that it had spent $149,500 on payroll costs between June 5, 2020, and September 30, 2020. This second loan forgiveness application was also not approved. SCHNEIDER did not make any payments on PPP No. 7812607800, which went into default. The SBA, as guarantor of the loan, provided Bank of America $60,231.28, consisting of the initial $59,366 loan amount plus $865.28 in outstanding interest, and shifting the loss to the SBA.

On or about January 23, 2021, Defendant and SCHNEIDER submitted a PPP application to Bank of America in the name of RealNZ Water LLC, which was assigned Bank of America Application Reference Number 4116781126. The application was submitted to Bank of America via interstate wires from Defendant in South Carolina. This application did not identify the first draw PPP fund disbursed to RealNZ Water LLC in June 2020. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that RealNZ Water LLC had ten employees, an average monthly payroll of $49,320, an annual revenue of $194,672, and a profit before tax of $68,431. The application sought payment of $123,300 in PPP funds. Bank of America did not approve this application.

Also on or about January 23, 2021, approximately ten minutes after the submission of Application Reference Number 4116781126, Defendant and SCHNEIDER submitted a second PPP application to Bank of America, which was assigned Application Reference Number 4116781286. This application was also submitted to Bank of America via interstate wires from Defendant in South Carolina. This application identified the previous PPP funds disbursed to RealNZ Water LLC. In the application, Defendant and SCHNEIDER falsely and fraudulently represented that RealNZ Water LLC had ten employees, an average monthly payroll of $49,320, $194,731 of annual revenue, and an annual profit before tax of $64,972. The application sought payment of $123,300 in PPP funds. Bank of America did not approve this application.

On or about February 18, 2021, Defendant and SCHNEIDER submitted a final PPP application to Bank of America, which was assigned Application Reference Number 4117836832. This application was submitted to Bank of America via interstate wires from Defendant in South Carolina. In this application, Defendant and SCHNEIDER falsely and fraudulently represented that RealNZ Water LLC had ten employees, an average monthly payroll of $49,833, an annual revenue of $248,970, and an annual profit before tax of $67,498. The application sought payment of $124,582 in PPP funds. Bank of America did not approve this application.

<u>LARSEN FIREARMS</u>

On or about April 4, 2020, LARSEN submitted an EIDL application, number 3600597608, to the SBA in the name of Larsen Firearms. In that application, LARSON stated that his business was a sole proprietorship and had no employees as of January 31, 2020. In the application, LARSEN requested an EIDL advance, which was approved in the amount of $1,000. However, the SBA declined to fund the remaining EIDL amount.

On or about February 22, 2021, Defendant and LARSEN submitted a request for EIDL Targeted Advance funds related to EIDL application number 3600597608. The request was submitted via interstate wires from Defendant to the SBA's Rapid Finance servers in Des Moines, Iowa. In the Targeted Advance request, Defendant and LARSEN falsely and fraudulently represented that Larsen Firearms had ten (10) employees as of the date of the Targeted Advance application. In the application, Defendant and LARSEN certified, and caused to be certified, that the information provided in the application was true and accurate in all material respects. These representations and certification were materially false and fraudulent and were made to induce the SBA to disburse EIDL funding for which LARSEN and Larsen Firearms were not eligible. LARSEN canceled the Targeted Advance request after being interviewed by federal agents.

On or about March 1, 2021, Defendant and LARSEN submitted a PPP application in the name of Larsen Firearms to Community First Bank. In the application, Defendant and LARSEN falsely and fraudulently represented that Larsen Firearms had ten (10) employees and an average monthly payroll of $59,667. In support of the application, Defendant and LARSEN submitted false and fraudulent IRS Form 941s purporting to show wages paid to employees by Larsen Firearms. In the application, Defendant and LARSEN certified that the information in the application and supporting documents were true and accurate. However, the certification as well as representations in the application and supporting documents were materially false and fraudulent and made to induce Community First Bank to disburse PPP funds for which LARSEN and Larsen Firearms were not eligible. Community First Bank did not approve the PPP application.

On or about March 2, 2021, Defendant and LARSEN submitted a PPP application in the name of Larsen Gunsmithing & Firearms to Bank of America. The application was submitted via interstate wires from Defendant. In the application, Defendant and LARSEN falsely and fraudulently represented that the company had ten (10) employees and average monthly payroll of $59,667. In support of the PPP application, Defendant and LARSEN submitted the same false and fraudulent payroll register and IRS Form 941s that were submitted to Community First Bank on or about March 1, 2021. In the application, Defendant and LARSEN certified that the information in the application and supporting documents were true and accurate. However, the certification as well as representations in the application and supporting documents were materially false and fraudulent and made to induce Bank of America to disburse PPP funds for which LARSEN and Larsen Gunsmithing & Firearms were not eligible. Based upon the false representations, Bank of America approved the application, which was assigned PPP No. 49674286-06, and disbursed $149,167 to LARSEN on or about March 23, 2021. On or about March 23, 2021, LARSEN sent $15,000 via interstate wires from his Bank of America account to Defendant's account at Pinnacle Bank in South Carolina ending x4255.

Between March 2020, and December 2021, Defendant and her co-conspirators, acting with intent to defraud, obtained $267,833 in PPP funds by submitting false and fraudulent information about SCHNEIDER and LARSEN's businesses to PPP lender banks. During the same period, Defendant and her co-conspirators, acting with intent to defraud, submitted additional PPP and EIDL applications in the name of SCHNEIDER and LARSEN's businesses seeking additional payments of $573,632, all of which were declined by the PPP lender bank or the SBA. Finally, the United States also incurred a loss of $5,933.30 in lender fees for the disbursed PPP funds. In total, the actual and intended loss through the material false and fraudulent pretenses, promises, and representations of Defendant and her co-conspirators, SCHNEIDER and LARSEN, was at least $847,398.30.

9. <u>The United States' Agreements</u>

The United States Attorney's Office for the Eastern District of Washington agrees that at the time of sentencing, the United States will move to dismiss Defendant KELLY JO DRIVER from Counts 1, 2, 3, 4, 6, 7, 9, and 11–24 of the Indictment filed on March 6, 2024, which charge Defendant with on count of Conspiracy to Commit Wire and Bank Fraud in violation of 18 U.S.C. § 1349, four counts of Wire Fraud in violation of 18 U.S.C. § 1343, three counts of False, Fictitious, or Fraudulent Claims in violation of 18 U.S.C. §§ 287, 2; and thirteen counts of Bank Fraud in violation of 18 U.S.C. § 1344(1)–(2).

The United States Attorney's Office for the Eastern District of Washington agrees not to bring additional charges against Defendant based upon the information it its possession at the time of this Plea Agreement and arising out of Defendant's conduct involving illegal activity charged in the Indictment, unless Defendant breaches this Plea Agreement before sentencing. Nothing in this agreement is intended to release any liability arising under Title 26, United States Code (Internal Revenue Code).

10. United States Sentencing Guidelines Calculations

Defendant understands and acknowledges that the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") apply and that the Court will determine Defendant's advisory range at the time of sentencing, pursuant to the Guidelines. The United States and Defendant agree to the following Guidelines calculations.

a. Base Offense Level

The United States and the Defendant agree that the base offense level for Making and Presenting a False, Fictious, or Fraudulent Claim is 6. U.S.S.G. § 2B1.1(a)(1).

b. Specific Offense Characteristics

The United States and the Defendant agree that Defendant's base offense level is increased by 14 levels because the loss amount was more than $550,000, but less than $1,500,000. See U.S.S.G. §2B1.1(b)(1)(H). The parties have no other agreements regarding the application of any other specific offense characteristics.

c. Acceptance of Responsibility

If Defendant pleads guilty and demonstrates a recognition and an affirmative acceptance of personal responsibility for the criminal conduct; provides complete and accurate information during the sentencing process does not commit any obstructive conduct; accepts and signs this Plea Agreement no later than August 30, 2024; and enters a plea of guilty as soon as the parties and Court can accommodate a change of plea hearing, the United States will recommend that the Defendant receive a two (2) level downward adjustment of responsibility, pursuant to U.S.S.G. §3E1.1(a).

If the adjusted offense level determined by the Court is 16 or greater and the Defendant pleads guilty and demonstrates a recognition and an affirmative acceptance of personal responsibility for the criminal conduct; provides complete and accurate information during the sentencing process does not commit any obstructive conduct; accepts and signs this Plea Agreement no later than August 30, 2024; and enters a plea of guilty as soon as the parties and Court can accommodate a change of plea hearing, the United States will, instead, move for a three (3) level downward adjustment in the offense level for the Defendant's timely acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a) and (b).

The United States and Defendant agree that at its option and on written notice to Defendant, the United States may elect not to recommend a reduction for acceptance of responsibility if, prior to the imposition of sentence, Defendant is charged with, or convicted of, any criminal offense, or if Defendant tests positive for any controlled substance.

d. <u>Criminal History</u>

The United States and Defendant have no agreement and make no representations about Defendant's criminal history category, which will be determined by the Court after the United States Probation Office prepares and discloses a Presentence Investigative Report. If the Presentence Investigation Report identifies no criminal history points and if the United States believes at the time of sentencing that Defendant qualifies for a Zero-Point Offender adjustment under U.S.S.G. §4C1.1, the United States will not object to such an adjustment.

11. Incarceration

Defendant acknowledges that the United States will recommend a sentence no greater than the bottom end of the sentencing guideline range determined by the Court at the time of sentencing. The Defendant may recommend any lawful sentence.

12. Criminal Fine

The United States and Defendant may make any recommendation concerning the imposition of a criminal fine. Defendant acknowledges that the Court's decision regarding a fine is final and non-appealable; that is, even if Defendant is unhappy with a fine ordered by the Court, that will not be a basis for Defendant to withdrawal from this guilty plea, or appeal Defendant's conviction, sentence, or fine.

13. Mandatory Special Penalty Assessment

Defendant agrees to pay the $100 mandatory special penalty assessment to the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C. § 3013, and shall provide a receipt from the Clerk to the United States before sentencing as proof of this payment.

14. Restitution

The United States and the Defendant hereby stipulate and agree that, pursuant to 18 U.S.C. §§ 3663, 3663A and 3664, the Court should order the Defendant to pay restitution to the United States Small Business Administration. Pursuant to 18 U.S.C. § 3663A(a)(3), the United States and Defendant agree that the appropriate amount of restitution should be at least $126,204.18, which consists of at least $63,199.58 for PPP loan application number 78126078-00 ($59,366.00 principal, $865.28 accrued interest, and $2,968.30 lender fee) and at least $63,004.60 for PPP loan application number 49653282-04 ($59,300.00 principal, $739.60 accrued interest, and $2,965.00 lender fee). The United States reserves the right to request additional restitution for any amounts owed to SBA relating to these two PPP loans, including but not limited to, loan origination fees, recording fees, accrued interest, and other loan costs.

With respect to restitution, the United States and the Defendant agree to the following:

(a) Restitution Amount and Interest

The United States and Defendant stipulate and agree that, pursuant to 18 U.S.C. §§ 3663, 3663A and 3664, the Court should order restitution in an amount of at least $126,204.18, and that any interest on this restitution amount, if any, should be waived.

(b) Payments

The parties agree the Court will set a restitution payment schedule based on Defendant's financial circumstances. *See* 18 U.S.C. § 3664(f)(2), (3)(A). That being said, Defendant agrees to pay not less than 10% of Defendant's net monthly income towards restitution.

(c) Treasury Offset Program and Collection

Defendant understands the Treasury Offset Program (TOP) collects delinquent debts owed to federal agencies. If applicable, the TOP may take part or all of Defendant's federal tax refund, federal retirement benefits, or other federal benefits and apply these monies to Defendant's restitution obligations. *See* 26 U.S.C. § 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

Defendant also understands the United States may, notwithstanding the Court-imposed payment schedule, pursue other avenues to ensure the restitution obligation is satisfied, including, but not limited to, garnishment of available funds, wages, or assets. *See* 18 U.S.C. §§ 3572, 3613, and 3664(m).

Nothing in this acknowledgment shall be construed to limit Defendant's ability to assert any specifically identified exemptions as provided by law, except as set forth in this Plea Agreement.

Until Defendant's fine and restitution obligations are paid in full, Defendant agrees fully to disclose all assets in which Defendant has any interest or over which Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or third party.

Until Defendant's fine and restitution obligations are paid in full, Defendant agrees to provide waivers, consents, or releases requested by the U.S. Attorney's Office to access records to verify the financial information.

(d) Obligations, Authorizations, and Notifications

Defendant agrees to truthfully complete the Financial Disclosure Statement that will be provided by the earlier of 30 days from Defendant's signature on this plea agreement or the date of the Defendant's entry of a guilty plea, sign it under penalty of perjury and provide it to both the United States Attorney's Office and the United States Probation Office. The parties agree that Defendant's failure to timely and accurately complete and sign the Financial Disclosure Statement, and any update thereto, may, in addition to any other penalty or remedy, constitute Defendant's failure to accept responsibility under U.S.S.G §3E1.1.

Defendant expressly authorizes the United States Attorney's Office to obtain a credit report on Defendant upon the signing of this Plea Agreement. Until the fine or restitution order is paid in full, Defendant agrees to provide waivers, consents or releases requested by the United States Attorney's Office to access records to verify the financial information.

Defendant agrees to notify the Financial Litigation Unit of the United States Attorney's Office before Defendant transfers any interest in property with a value exceeding $1,000 owned directly or indirectly, individually or jointly, by Defendant, including any interest held or owned under any name, including trusts, partnerships and corporations. Further, pursuant to 18 U.S.C. § 3664(k), Defendant shall notify the Court and the United States Attorney's Office within a reasonable period of time, but no later than 10 days, of any material change in Defendant's economic circumstances that might affect defendant's ability to pay restitution, including, but not limited to, new or changed employment, increases in income, inheritances, monetary gifts or any other acquisition of assets or money.

Until the fine or restitution order is paid in full, Defendant agrees to disclose all assets in which Defendant has any interest or over which Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or third party.

Pursuant to 18 U.S.C. § 3612(b)(F), Defendant understands and agrees that until a fine or restitution order is paid in full, Defendant must notify the United States Attorney's Office of any change in the mailing address or residence address within 30 days of the change.

Defendant acknowledges that the Court's decision regarding restitution is final and non-appealable; that is, even if Defendant is unhappy with the amount of restitution ordered by the Court, that will not be a basis for Defendant to withdraw Defendant's guilty plea, withdraw from this Plea Agreement, or appeal Defendant's conviction, sentence, or restitution order.

15. Supervised Release

The United States and Defendant each agree to recommend 3 years of supervised release. Defendant agrees that the Court's decision regarding the conditions of Defendant's Supervised Release is final and non-appealable; that is, even if Defendant is unhappy with the conditions of Supervised Release ordered by the Court, that will not be a basis for Defendant to withdraw Defendant's guilty plea, withdraw from this Plea Agreement, or appeal Defendant's conviction, sentence, or any term of Supervised Release.

The United States and Defendant agree to recommend that in addition to the standard conditions of supervised release imposed in all cases in this District, the Court should also impose the following conditions:

a. The United States Probation Officer may conduct, upon reasonable suspicion, and with or without notice, a search of

Defendant's person, residences, offices, vehicles, belongings, and areas under Defendant's exclusive or joint control;

b. Defendant will provide financial information and copies of federal income tax returns, and allow credit checks, at the direction of the United States Probation Office;

c. Defendant shall disclose all assets and liability to the United States Probation Office and shall not transfer, sell, give away, or otherwise convey or secret any asset, without the advance approval of the United States Probation Office;

d. Defendant is prohibited from incurring any new debt, opening new lines of credit, or enter any financial contracts or obligations without the prior approval of the United States Probation Office; and

e. Defendant shall participate in and complete financial counseling and life skills programs at the direction of the United States Probation Office.

Defendant understands that if Defendant violates any condition of Defendant's supervised release, the Court may revoke Defendant's term of supervised release, and require Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, up to 3 years in prison.

Accordingly, Defendant understands that if Defendant commits one or more violations of supervised release, Defendant could serve a total term of incarceration greater than the maximum sentence authorized by statute for Defendant's offense or offenses of conviction.

16. Payments While Incarcerated

If Defendant lacks the financial resources to pay the monetary obligations imposed by the Court, Defendant agrees to earn money toward these obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

17. Additional Violations of Law Can Void Plea Agreement

The United States and Defendant agree that the United States may, at its option and upon written notice to the Defendant, withdraw from this Plea Agreement or modify its sentencing recommendation if, prior to the imposition of sentence, Defendant is charged with or convicted of any criminal offense or tests positive for any controlled substance.

18. Waiver of Appeal Rights

In return for the concessions that the United States has made in this Plea Agreement, Defendant agrees to waive Defendant's right to appeal Defendant's conviction and the sentence the Court imposes. Defendant expressly waives Defendant's right to appeal any fine, term of supervised release, or restitution order imposed by the Court. Defendant expressly waives the right to file any post-conviction motion attacking Defendant's conviction and sentence, including a motion pursuant to 28 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from information not now known by Defendant and which, in the exercise of due diligence, Defendant could not know by the time the Court imposes sentence. Nothing in this Plea Agreement shall preclude the United States from opposing any post-conviction motion for a reduction of sentence or other attack upon the conviction or sentence, including, but not limited to, writ of habeas corpus proceedings brought pursuant to 28 U.S.C. § 2255.

19. Withdrawal or Vacatur of Defendant's Plea

Should Defendant successfully move to withdraw from this Plea Agreement or should Defendant's conviction be set aside, vacated, reversed, or dismissed under any circumstance, then:

a. this Plea Agreement shall become null and void;

b. the United States may prosecute Defendant on all available charges;

c. The United States may reinstate any counts that have been dismissed, have been superseded by the filing of another charging instrument, or were not charged because of this Plea Agreement; and

d. the United States may file any new charges that would otherwise be barred by this Plea Agreement.

The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

Defendant agrees to waive any objections, motions, and/or defenses Defendant might have to the United States' decisions to seek, reinstate, or reinitiate charges if a count of conviction is withdrawn, set aside, vacated, reversed, or dismissed, including any claim that the United States has violated Double Jeopardy.

Defendant agrees not to raise any objections based on the passage of time, including but not limited to, alleged violations of any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

20. <u>Waiver of Attorney Fees and Costs</u>

Defendant agrees to waive all rights Defendant may have under the "Hyde Amendment," Section 617, P.L. 105- 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the investigation and prosecution of all charges in the above-captioned matter and of any related allegations (including, without limitation, any charges to be dismissed pursuant to this Plea Agreement or any charges previously dismissed or not brought as a result of this Plea Agreement).

21. Integration Clause

The United States and Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and Defendant, and no other promises, agreements, or conditions exist between the United States and Defendant concerning the resolution of the case. This Plea Agreement is binding only on the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state, or local authorities. The United States and Defendant agree that this Agreement cannot be modified except in a writing that is signed by the United States and Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

Vanessa R. Waldref
United States Attorney

5/21/25

Jeremy J. Kelley
Frieda K. Zimmerman
Assistant United States Attorneys

Date

I have read this Plea Agreement and I have carefully reviewed and discussed every part of this Plea Agreement with my attorney. I understand the terms of this Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and voluntarily. I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement. No one has threatened or forced me in any way to enter into this Plea Agreement. I agree to plead guilty because I am guilty.

Kelly Jo Driver
Defendant

5/21/2025
Date

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court should not accept Defendant's guilty plea.

Jennifer Barnes
Attorney for Defendant

5/21/2025
Date