

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 30 2008
Clerk, U.S. District Court
By _____

UNITED STATES OF AMERICA

§
§
§
§
§

v.

No. 3:07-CR-289-M
ECF

ANDREA L. SPENCER (11)

PLEA AGREEMENT

Andrea L. Spencer (Spencer), the defendant's attorney Sam Ogan, and the United States of America (the government), agree as follows:

1. **Rights of the defendant:** Spencer understands that she has the right:
 - a. to plead not guilty;
 - b. to have a trial by jury;
 - c. to have her guilt proven beyond a reasonable doubt;
 - d. to confront and cross-examine witnesses and to call witnesses in her defense; and
 - e. against compelled self-incrimination.

2. **Waiver of rights and plea of guilty:** Spencer waives these rights and pleads guilty to the offense alleged in Count 10 of the indictment, charging a violation of 18 U.S.C. § 371 (18 U.S.C. § 666(a)(1)(B)), that is, conspiracy to commit bribery concerning a local government receiving federal benefits. Spencer understands the nature and elements of the crime to which she is pleading guilty, and agrees that the factual resume she has signed is true and will be submitted as evidence.

GOVERNMENT
EXHIBIT
5396
3:07-CR-289-M(09)

3. **Sentence:** The maximum penalties the Court can impose includes:
- a. imprisonment for a period not to exceed 5 years;
 - b. a fine not to exceed \$250,000, or twice the pecuniary gain to the defendant or loss to the victim(s);
 - c. a mandatory term of supervised release of not more than 3 years, which may follow any term of imprisonment. If Spencer violates the conditions of supervised release, she could be imprisoned for the entire term of supervised release;
 - d. a mandatory special assessment of \$100.00;
 - e. restitution to victims or to the community, which is mandatory under the law, and which Spencer agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone; and
 - f. costs of incarceration and supervision.

4. **Court's sentencing discretion and role of the Guidelines:** Spencer understands that the sentence in this case will be imposed by the Court after consideration of the United States Sentencing Guidelines. The guidelines are not binding on the Court, and are only advisory. Spencer has reviewed the guidelines with her attorney, but understands no one can predict with certainty the outcome of the Court's consideration of the guidelines in this case. Spencer will not be allowed to withdraw her guilty plea if her sentence is higher than expected. Spencer fully understands that the actual sentence imposed is solely within the Court's discretion.

5. **Mandatory special assessment:** Prior to sentencing, Spencer agrees to pay to the U.S. District Clerk the amount of \$100.00, in satisfaction of the mandatory special assessment in this case.

6. **Defendant's cooperation:** Spencer shall cooperate with the government by giving truthful and complete information and testimony concerning her participation in the offense of conviction and knowledge of criminal activities. Upon demand, Spencer shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding her capacity to satisfy any fines or restitution. The government will advise the Court of the extent of the defendant's cooperation.

7. **Government's agreement:** The government will not bring any additional charges against Spencer based upon the conduct underlying and related to Spencer's plea of guilty. The government will dismiss, after sentencing, the remaining charges in the indictment pending against Spencer. Further, if, in its sole discretion, the government determines that Spencer has provided substantial assistance in the investigation or prosecution of others, it will file a motion setting forth the basis for its request for consideration of her assistance. Whether and to what extent to grant the motion is solely within the Court's discretion. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against Spencer or any property.

8. **Violation of agreement:** Spencer understands that if she violates any provision of this agreement, or if her guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute her for all offenses of which it has knowledge. If this happens, Spencer waives any objections based

upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, Spencer also waives objection to the use against her of any information or statements she has provided to the government, and any resulting leads.

9. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

10. **Waiver of right to appeal or otherwise challenge sentence:** Spencer waives her rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal from her conviction and sentence. She further waives her right to contest her conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. Spencer, however, reserves the right to bring (a) a direct appeal of (i) a sentence exceeding the statutory maximum punishment, (ii) an arithmetic error at sentencing, and (b) to challenge the voluntariness of her guilty plea or this waiver, and (c) a claim of ineffective assistance of counsel.

11. **Representation of counsel:** Spencer has thoroughly reviewed all legal and factual aspects of this case with her lawyer and is fully satisfied with that lawyer's legal representation. Spencer has received from her lawyer explanations satisfactory to her concerning each paragraph of this plea agreement, each of her rights affected by this agreement, and the alternatives available to her other than entering into this agreement

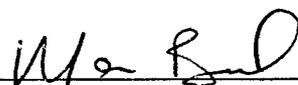
Spencer concedes that she is guilty, and after conferring with her lawyer, Spencer has concluded that it is in her best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

12. **Entirety of agreement:** This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties.

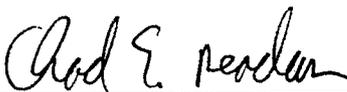
AGREED TO AND SIGNED this 24 day of April, 2008.

RICHARD B. ROPER
UNITED STATES ATTORNEY

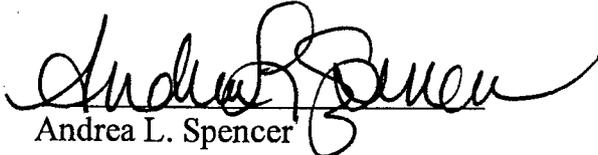

ANDREA L. SPENCER
Defendant


MARCUS BUSCH
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SAM OGAN
Attorney for Defendant


CHAD MEACHAM
Deputy Criminal Chief

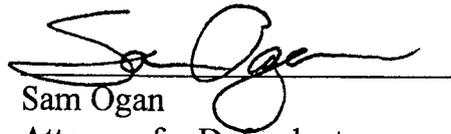
I have read this Plea Agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.



Andrea L. Spencer
Defendant

24 April 2008
Date

I am the defendant's counsel. I have carefully reviewed every part of this Plea Agreement with the defendant. To my knowledge and belief, my client's decision to enter into this Plea Agreement is an informed and voluntary one.



Sam Ogan
Attorney for Defendant

4/24/08
Date