

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON**

CRIMINAL ACTION NO. 5:22-138-KKC

UNITED STATES OF AMERICA

PLAINTIFF

V.

PLEA AGREEMENT

JAMES A. MCDONALD

DEFENDANT

* * * * *

1. Pursuant to Federal Rule of Criminal Procedure 11(c), the Defendant will enter a guilty plea to Counts 7 and 8 of the Indictment, charging violations of 18 U.S.C. § 371, Conspiracy to Commit an Offense against the United States, that is, crop insurance fraud. Pursuant to Rule 11(c)(1)(A), the United States will move at sentencing to dismiss the remaining counts against the Defendant contained in the Indictment.

2. The essential elements of Count 7 and 8 are:

(a) That two or more persons conspired, or agreed, to defraud the United States, by committing the crime of making false statements and reports for the purpose of influencing in any way the actions of the Federal Crop Insurance Corporation ("FCIC"), and companies the FCIC reinsures, upon an application, advance, commitment, loan, and insurance agreement or application for insurance or a guarantee, in violation of 18 U.S.C. § 1014;

(b) That the Defendant knowingly and voluntarily joined the conspiracy; and

(c) That at some point during the existence of the conspiracy, at least one of its members performed an overt act in order to further the objective of the conspiracy.

3. As to Counts 7 and 8, the United States could prove the following facts that establish the essential elements of the offenses beyond a reasonable doubt, and the Defendant admits these facts:

(a) The Defendant owned and rented farmland in Bourbon and Nicholas Counties, located within the Eastern District of Kentucky. The Defendant produced tobacco and corn, which he began to insure through federal crop insurance in or around 2012 and 2013, respectively. His brother-in-law is co-Defendant, Randall D. Taulbee, and his sister-in-law is co-Defendant, Cherie Lynn Noble.

(b) Beginning in at least March of 2013, and continuing until in or about November 2017, the Defendant worked with Taulbee, and at times his insurance agent, to falsify crop insurance policies in his and Taulbee's names in the following ways:

- a. McDonald overreported, and thereby over-insured, acreage (at least Crop Year 2014).
- b. McDonald falsified a cause of loss (at least Crop Year 2015).
- c. McDonald submitted false input records from Pecks Farm Supply (at least Crop Year 2016).
- d. McDonald reported himself as a 100% insurable interest holder in crop for which he split inputs with Taulbee (at least Crop Years 2013 to 2017). When McDonald received checks from his Approved Insurance Provider, ARMtech, he split those proceeds with Taulbee.
- e. McDonald failed to report corn sales on his crop insurance claim of loss, which he hid by selling the corn in his minor son's name, the proceeds for which he split with Taulbee (at least Crop Years 2013 and 2015)

(c) In Crop Years 2015 and 2016, the Defendant agreed with Taulbee and Noble to place crop insurance in the name of Noble. For example on July 15, 2015, and again on July 13, 2016, Noble signed acreage reports claiming to be the 100% insurable interest holder over tobacco crop. However, this crop belonged to the Defendant and Taulbee, but placing the crop in Noble's name enabled the Defendant and Taulbee to get larger indemnity payouts due

to Noble's status as a new producer. Once Noble received crop insurance indemnity payments, she paid most of the money back to the Defendant and Taulbee.

4. The statutory punishment for Counts 7 and 8 is imprisonment for not more than 5 years, a fine of not more than \$250,000 or twice the gross gain or loss, and a term of supervised release of not more than 3 years. A mandatory special assessment of \$100 per count applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

5. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend the following sentencing guidelines calculations, and they may object to or argue in favor of other calculations. This recommendation does not bind the Court.

- (a) United States Sentencing Guidelines (U.S.S.G.), November 1, 2021, manual, will determine the Defendant's guidelines range.
- (b) Pursuant to U.S.S.G. § 1B1.3, the Defendant's relevant conduct includes the loss to the United States Department of Agriculture incurred as a result of his fraudulent misrepresentations from Crop Year 2013 to 2016. His relevant conduct also includes losses incurred as a result of misrepresentations on his Crop Hail policies from Crop Years 2014 to 2015.
- (c) Pursuant to U.S.S.G. § 2B1.1(a)(2), the base offense level is 6.
- (d) Pursuant to U.S.S.G. § 2B1.1(b)(1)(G), increase the offense level by 14 levels for the loss amount exceeding \$550,000.
- (e) Pursuant to U.S.S.G. § 2B1.1(b)(10)(C), increase the offense level by 2 levels, because the offense involved sophisticated means.
- (f) Pursuant to U.S.S.G. § 3B1.1(c), increase the offense level by 2 levels for the Defendant being an organizer or leader in this criminal activity.

(g) Pursuant to U.S.S.G. § 3E1.1 and unless the Defendant commits another crime, obstructs justice, or violates a court order, decrease the offense level by 2 levels for the Defendant's acceptance of responsibility.

(h) Pursuant to U.S.S.G. § 5E1.1, restitution is mandatory. Restitution is owed to the following, in the following amounts:

a. United States Department of Agriculture-Risk Management Agency in the total amount of \$458,104.00.

b. AgriSompo North America in the total amount of \$260,680.

The Defendant's restitution obligation should be jointly and severally held with his co-Defendants, Randall D. Taulbee and Cherie Lynn Noble.

6. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4.

7. The Defendant will not file a motion for a decrease in the offense level based on a mitigating role pursuant to U.S.S.G. § 3B1.2 or a departure motion pursuant to U.S.S.G. Chapter 5, Parts H or K.

8. The Defendant waives the right to appeal the guilty plea, conviction, and sentence. Except for claims of ineffective assistance of counsel, the Defendant also waives the right to attack collaterally the guilty plea, conviction, and sentence.

9. The United States will recommend releasing the Defendant on the current conditions for future court appearances if the Defendant does not violate the terms of the order setting conditions of release.

10. The Defendant agrees to forfeit to the United States a money judgment in the amount of \$207,754.65, which represents the amount of proceeds that he obtained as a result of the offenses. The Defendant agrees that this property is subject to forfeiture

because a nexus exists between the property and the offense, as set out in the forfeiture allegation of the Indictment. The Defendant agrees that the forfeiture money judgment is separate from any restitution, fine, or penalty ordered by the Court and constitutes a debt to the United States that shall survive bankruptcy. The Defendant waives any and all timing and notice provisions under Rule 32.2 and consents to the entry of an order of forfeiture imposing the money judgment. The Defendant also consents to the forfeiture of any other property of his up to the amount of the forfeiture money judgment, pursuant to 21 U.S.C. § 853(p), to the extent that it is not otherwise paid in full.

11. The Defendant agrees to a voluntary, five-year exclusion from participating in or receiving benefits from any federal procurement or non-procurement transaction in accordance with 2 C.F.R. § 180.1020(a) and 7 U.S.C. § 2209j(a). This means that the Defendant will be excluded from participating in most procurement and non-procurement programs and activities unless such program is exempted under 2 C.F.R. § 180.215 and 2 C.F.R. § 417.215. The exclusion includes the USDA programs administered by the Risk Management Agency and the Farm Service Agency. The Defendant further agrees to be excluded from indirectly or directly holding any USDA certifications to produce or handle organic agricultural products through the USDA Agricultural Marketing Service National Organic Program (NOP). The Defendant further agrees to be excluded from participating in, receiving, or earning any income or any other benefit from the Federal Crop Insurance Program and the Farm Service Agency. As part of this agreement, Defendant agrees to waive any judicial or administrative right that he may have to challenge this voluntary

exclusion. The Defendant further agrees that his voluntary, five-year exclusion shall still be valid even should there not be an available administrative mechanism to effectuate or enforce such exclusions. The Defendant's voluntary, five-year exclusion shall be effective upon the date this plea agreement is fully executed. Nothing in this paragraph shall be construed as to preclude the U.S. Department of Agriculture from seeking or obtaining any remedies as to the Defendant within its own administrative powers.

12. The Defendant agrees to cooperate fully with the United States Attorney's Office by making a full and complete financial disclosure. Within 30 days of pleading guilty, the Defendant agrees to complete and sign a financial disclosure statement or affidavit disclosing all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. The Defendant will submit to an examination, which may be taken under oath and may include a polygraph examination. The Defendant will not encumber, transfer, or dispose of any monies, property, or assets under the Defendant's custody or control without written approval from the United States Attorney's Office. If the Defendant is ever incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments. If the Defendant fails to comply with any of the provisions of this paragraph, the United States, in its discretion, may refrain from moving

the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may argue that the Defendant should not receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a).

13. The Defendant understands and agrees that, pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, the Defendant agrees that it is 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. The Defendant waives any requirement for demand of payment on any fine, restitution, or assessment imposed by the Court and agrees that any unpaid obligations will be submitted to the United States Treasury for offset. The Defendant authorizes the United States to obtain the Defendant's credit reports at any time. The Defendant authorizes the U.S. District Court to release funds posted as security for the Defendant's appearance bond in this case, if any, to be applied to satisfy the Defendant's financial obligations contained in the judgment of the Court. Nothing in this paragraph shall be construed as to preclude the U.S. Department of Agriculture from seeking or obtaining any remedies as to the Defendant within its own administrative powers.

14. If the Defendant violates any part of this Agreement, the United States may void this Agreement and seek an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.

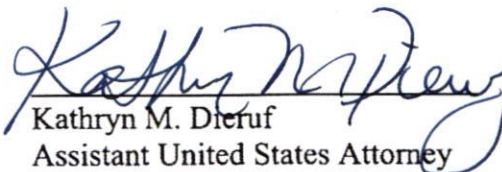
15. This document and the supplement contain the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky and the Defendant. The United States has not made any other promises to the Defendant.

16. This Agreement does not bind the United States Attorney's Offices in other districts, or any other federal, state, or local prosecuting authorities.

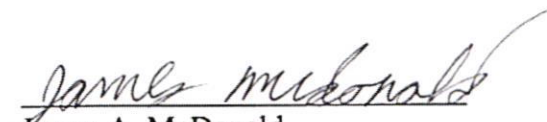
17. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

CARLTON S. SHIER, IV
UNITED STATES ATTORNEY

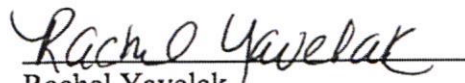
Date: 5/15/2023

By: 
Kathryn M. Dieruf
Assistant United States Attorney

Date: 5-12-23


James A. McDonald
Defendant

Date: 5/12/23


Rachel Yavelak
Attorney for Defendant