

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Action
v.)	No. 05-03048-01-CR-S-RED
)	
TAWYUNA PALMER,)	
)	
Defendant.)	

PLEA AGREEMENT

The following agreement has been made between TAWYUNA PALMER (“Defendant”), by and through her undersigned counsel, David R. Mercer, Assistant Federal Public Defender, and the United States of America, by and through the United States Attorney for the Western District of Missouri, Todd P. Graves, and the undersigned Assistant United States Attorney. There are no promises, agreements or understandings as to the disposition of this case other than those set forth herein.

1. Defendant has been informed she is under federal criminal investigation for embezzling and stealing money of Local 11-14228 of the United Steelworkers of America (“Local 11-14228”). Defendant agrees promptly to waive indictment by a federal grand jury and enter a plea of guilty to a one-count information. The information charges Defendant with embezzling and stealing money of Local 11-14228 while an officer and employee of the Local in the aggregate amount of \$21,449.77 from in or about February 16, 1998 through on or about August 25, 2003 in Joplin, Jasper County, Missouri in violation of 29 U.S.C. § 501(c). By entering into this Plea Agreement, Defendant admits that she knowingly committed this offense, and is in fact guilty of this offense.

2. The parties agree that the following facts are true:

Defendant became a member of Local 11-14228 of the United Steelworkers of America ("Local 11-14228") in the early 1980's, and became Financial Secretary and an employee of Local 11-14228 in the late 1980's. The local removed Defendant from her position as Financial Secretary shortly after August 26, 2003. Local 11-14228 has not had an office since before 1998. During the period Local 11-14228 has not had an office and before her removal as Financial Secretary, Defendant maintained the local's books and records at her residence located at XXXXXXXXXXXXXXX, Joplin, Jasper County, Missouri. During this same period, Local 11-14228 had a single checking account at First State Bank of Joplin in Joplin, Jasper County, Missouri. As Financial Secretary of Local 11-14228, Defendant received a salary of \$100 a month from Local 11-14228 and was responsible for receiving, disbursing and accounting for all money paid to and by Local 11-14228.

Beginning on February 16, 1998 and continuing through August 25, 2003, Defendant wrote more than ninety checks on Local 11-14228's checking account at First State Bank of Joplin that either were unauthorized or were in excess of the amount that was authorized. All but one of the checks were payable to Defendant. Defendant deposited most of the checks payable to her in her account at Joplin Metro Credit Union in Joplin, Jasper County, Missouri and negotiated the remainder of these checks for currency at banks in Jasper County, Missouri. The one check not payable to Defendant was payable to a telephone company and was transferred to the telephone company as payment for Defendant's personal telephone expenses at her residence. The unauthorized amount of these checks in the aggregate was \$21,449.77. Defendant knew at the time she wrote and negotiated each of these checks that she was not authorized to write or negotiate the check. To conceal her thefts of the local's money, Defendant occasionally made entries in the local's ledger that purported to show the check in question was written for a legitimate purpose of the local (e.g., "Internal Revenue" or the name of a member of the local). Defendant also occasionally prepared a check for a legitimate payee of the local, obtained countersignatures on the check, and then changed the payee to herself. Defendant also created false expense vouchers for herself.

After the local discovered Defendant's thefts of the local's money and removed her as Financial Secretary, Defendant repaid Local 11-14228 the loss caused by her thefts.

During the period 1998 through 2003, Local 11-14228's geographic jurisdiction included parts of Missouri, Kansas and Oklahoma. During this same period, Local 11-14228 existed in significant part for the purpose of dealing with Missouri Gas Energy and Kansas Gas Service concerning the terms and

conditions of employment for Local 11-14228's members who were employed by these employers, and was recognized as, and acted as, the representative of its members in dealing with these employers. Missouri Gas Energy is a division of Southern Union Company, which owns and operates more than 10,000 miles of interstate pipelines that transport natural gas from the Gulf of Mexico, Texas and Oklahoma to markets in the Midwest and Great Lakes region. Missouri Gas Energy distributes natural gas to customers in Missouri. Kansas Gas Service is a division of ONEOK, Inc. and distributes natural gas to customers in Kansas and Oklahoma. ONEOK, Inc. distributes natural gas to customers in Kansas, Oklahoma and Texas. In addition, ONEOK, Inc.'s energy marketing and trading operations provide service to customers in most states. In March 2003, Local 11-14228 filed Form LM-3, which is an annual financial report, with the Secretary of the United States Department of Labor for 2002. Local 11-14228 also filed Form LM-3 for earlier periods.

3. Defendant understands the maximum sentence for the offense to which she is pleading guilty is as follows. The Court may impose a statutory maximum term of imprisonment of not more than 5 years followed by a term of not more than 3 years supervised release. In addition to the terms of imprisonment and supervised release, Defendant understands that the Court may impose a fine of not more than \$250,000. Defendant further understands that in addition to any fine imposed, the Court may impose restitution for the offense of conviction and must impose a special assessment in the amount of \$100. Defendant agrees to pay the special assessment to the Clerk of the Court on the date of sentencing. Defendant further understands that the offense to which she is pleading guilty is a Class D felony.

4. Defendant acknowledges that she has discussed the issue of supervised release with her attorney and that she understands the nature and the effects of supervised release. In particular, Defendant understands that a violation of a condition of her supervised release may result in the revocation of supervised release and the imposition of an additional term of imprisonment of not more than 2 years, and that Defendant may be required to fully serve that new term of imprisonment without receiving credit for time previously served during post-

release supervision. Defendant also understands that if her term of supervised release is revoked, the Court may impose, in addition to a new term of imprisonment, a new term of supervised release after imprisonment of not more than 3 years less any term of imprisonment imposed on revocation of Defendant's supervised release.

5. In addition, Defendant understands parole is not available. Defendant also understands the Court must consult and take into account the United States Sentencing Guidelines issued under the Sentencing Reform Act of 1984 (the "USSG") when sentencing Defendant, but the Court is not bound by the USSG. Defendant further understands that the application of the USSG in this case (including the determination of relevant conduct, the base offense level and presence of specific offense characteristics for the offense of conviction, the applicability of victim-related adjustments, role in the offense adjustments, obstruction adjustments, multiple counts adjustments and the acceptance of responsibility adjustment, and the determination of Defendant's criminal history category under the Guidelines) shall be determined by the Court after completion of the presentence investigation in this case. Although not binding on the Court or the United States Probation Office, the United States and Defendant agree as follows with respect to the USSG. USSG § 2B1.1 is most applicable to the statute and offense of conviction. So long as Defendant complies timely and fully with her obligations under this Plea Agreement, abides by all conditions of any presentence release and does not commit any additional crime, the United States anticipates that Defendant will be entitled to a 2-level downward adjustment for acceptance of responsibility and, if Defendant's offense level before adjustment for acceptance of responsibility is 16 or greater, also anticipates that the United States will file a written motion at or before sentencing setting forth the reasons why the

United States believes an additional 1-level downward adjustment for acceptance of responsibility is appropriate.

6. Defendant understands that this Plea Agreement binds only Defendant and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority.

7. In return for Defendant's plea of guilty, the United States Attorney for the Western District of Missouri agrees (i) to recommend a sentence of imprisonment near or, if the low end of the imprisonment guideline range is greater than zero, at the low end of the imprisonment guideline range the Court determines is applicable to the offense of conviction, and (ii) not to file any additional criminal charges against Defendant in the Western District of Missouri disclosed at the time of the execution of this Plea Agreement by the federal criminal investigation that gave rise to the information in this case.

8. Defendant agrees that if the United States determines that Defendant has violated any provision of this Plea Agreement, or has committed any local, state, or federal crime after June 22, 2004, or has violated a condition of any presentence release, the United States is released from its obligations under this Plea Agreement and may recommend any lawful sentence, any plea of guilty previously entered by Defendant will remain in effect and cannot be withdrawn, and Defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and any substantive offenses arising from this investigation. Further, any federal prosecution that is not barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against Defendant notwithstanding the expiration of the statute

of limitations between the time of signing this Plea Agreement and the commencement of the prosecution. Any prosecution that would be barred by the statute of limitations but for this paragraph must be commenced within one year after the later of Defendant's sentencing in this case or the United States' determination that makes this paragraph applicable.

9. Defendant understands that if the Court accepts this Plea Agreement but imposes a sentence that Defendant does not like or agree with, she will not be permitted to withdraw her plea of guilty.

10. The parties expressly waive the right to appeal or collaterally attack by post-conviction motion any issue agreed upon in this Plea Agreement.

11. Defendant 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 limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

12. Defendant understands the United States will provide to the United States Probation Office and the Court a government version of the offense conduct. This may include information concerning the background, character, and conduct of Defendant including the entirety of Defendant's criminal activities. Defendant understands these disclosures are not limited to the conduct to which Defendant has pled guilty. The United States may respond to comments made or positions taken by Defendant or Defendant's counsel and may correct any misstatements or inaccuracies. The United States further reserves its right to make all recommendations and arguments it deems appropriate regarding the disposition of this case,

subject only to any limitations set forth in this Plea Agreement.

13. The parties understand and agree that the agreements and recommendations contained in this Plea Agreement are not binding on the United States Probation Office or the Court. In particular, Defendant understands and agrees she may not withdraw her plea of guilty because the Court does not agree with and declines to follow or grant the United States' agreements and recommendations.

14. Defendant has read this Plea Agreement, understands it, and by her signature, states that it is true and accurate and not the result of any threats or coercion. Defendant acknowledges that she is entering into this Plea Agreement and is pleading guilty freely and voluntarily. Defendant further acknowledges that she understands the nature of the offense or offenses to which she is pleading guilty and the elements of the offense or offenses, including the penalties provided by law, and is completely satisfied with the representation and advice received from her undersigned counsel. Defendant also understands that she has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against her, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in Defendant's defense. Defendant understands that by pleading guilty, she waives or gives up these rights and there will be no trial. Defendant further understands that if she pleads guilty, the Court may ask her questions about the offense or offenses to which she pled guilty, and if Defendant answers those questions under oath and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or false statement. Defendant also understands she is pleading guilty to a felony offense and, as a

result, may be

deprived of certain rights, such as the right to vote, hold public office, serve on a jury, and possess a firearm.

Todd P. Graves
United States Attorney

By /s/ Douglas C. Bunch

4/18/2005
Date: _____

Douglas C. Bunch
Assistant United States Attorney

4-18-05
Date: _____

/s/ Tawyuna Palmer

Tawyuna Palmer
Defendant

4-18-05
Date: _____

/s/ M. Nahon for

David R. Mercer
Assistant Federal Public Defender
Attorney for Defendant