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6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA, )  
10 ) CR. No. S-03-388-GGH  
Plaintiff, )  
11 ) STIPULATED AMENDMENT TO  
v. ) DIVERSION AGREEMENT OF  
12 ) DEREK MESSENGER AND  
DEREK MESSENGER, ) PROPOSED ORDER  
13 )  
Defendant. )  
14 )

15  
16 On May 3, 2004, defendant Derek Messenger, entered into a  
17 diversion agreement with the government. Under the terms of that  
18 agreement, Mr. Messenger agreed and acknowledged he had committed an  
19 offense against the United States between on or about September 4,  
20 1998 and on or about February 17, 1999, in violation of Title 18  
21 United States Code, Section 669, in that he did knowingly and  
22 willfully without authority, convert to the use of any person other  
23 than the rightful owner, and intentionally misapplied the funds,  
24 property or other assets of health care benefit programs, to wit:  
25 Blue Shield of California, Kaiser Permanente, Medical Eye Services,  
26 and Guarantee Life Insurance Company, for employees of Capitol  
27 Prestige Travel, (a.k.a. Carlson Wagonlit Travel, Carlson Travel  
28 Network, Sears Travel Centers, and Travel Authority). In return for

1 accepting responsibility for his conduct, it was agreed on the  
2 authority of the Attorney General of the United States, by McGregor  
3 W. Scott, United States Attorney for the Eastern District of  
4 California, and Laurel D. White, Assistant United States Attorney  
5 for the Eastern District of California, that prosecution in this  
6 District for his offense would be deferred for a period of 18  
7 months, beginning on May 3, 2004, provided Mr. Messenger abided by  
8 the conditions and the requirements of the diversion program  
9 supervised by Pre Trial Services.

10       Among the conditions Mr. Messenger was required to uphold was  
11 his pledge to pay \$5,000 in restitution to victims of the offense.  
12 Absent from the original diversion agreement, however, was the list  
13 of names of victims and loss amounts each victim sustained. The  
14 government has since computed the loss for each and compiled a list  
15 of victims' names and addresses. Therefore, the parties  
16 respectfully request that the following list of victims and loss  
17 amounts be made a part of the diversion agreement so that the  
18 clerk's office for the Eastern District of California, will know who  
19 to distribute restitution monies to and in what amount. The  
20 parties acknowledge that the \$5,000 Mr. Messenger is required to pay  
21 will not cover the full amount of restitution. The parties ask,  
22 however, that the Clerk's Office establish a percentage of the  
23 \$8,998.10 loss computed below, which each victim is entitled to  
24 receive, and then allocate restitution according to those  
25 percentages, based on Mr. Messenger's \$5,000 restitution payment.

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1 The parties stipulate that the following victims are entitled  
 2 to payments as indicated:

| 3  | <u>Name</u>                             | <u>Address</u>   | <u>Loss Amount</u> |
|----|---|--|--------------------|
| 4  | Sharon Copas                            | 351 Del Verde Circle, #7,<br>Sacramento, CA 95833      | \$ 201.24          |
| 5  | Timothy Corcoran                        | 3847 Moddison Avenue<br>Sacramento, CA 95819           | \$ 330.30          |
| 6  | Mary Ann Dalton                         | 15124 Reynosa Drive<br>Rancho Murieta, CA 95683        | \$ 348.18          |
| 7  | Richard DeDanann                        | 7157 Canelo Hills Drive<br>Citrus Heights, CA 95610    | \$1,101.30         |
| 8  | Daniela Devitt                          | 4825 Squadron Court<br>Fair Oaks, CA 95628             | \$ 134.82          |
| 9  | William Eshenaur                        | 2901 Weald Way, #111<br>Sacramento, CA 95833           | \$ 66.09           |
| 10 | Janell Evans<br>a.k.a.<br>Janell Pewitt | 3410 Kroy Way<br>Sacramento, CA 95820                  | \$ 448.38          |
| 11 | Helen Harrison                          | 969 Fulton Avenue, #566<br>Sacramento, CA 95825        | \$ 460.90          |
| 12 | Alicia Lellman                          | 8581 Hilton Way<br>Fair Oaks, CA 95628                 | \$ 230.45          |
| 13 | Linda Levinson                          | 1630 8 <sup>th</sup> Avenue<br>San Francisco, CA 94122 | \$2,159.63         |
| 14 | Juan Magana                             | 608 Calle Cuesta<br>Watsonville, CA 95076              | \$ 231.21          |
| 15 | Kathy McCarron                          | 3005 Bertis Drive<br>Sacramento, CA 95821              | \$ 498.20          |
| 16 | Joan Papantoniadis                      | 7420 Lindale Drive<br>Sacramento, CA 95828             | \$1,386.22         |
| 17 | Del Powell                              | 3394 Smoketree Drive, #283<br>Sacramento, CA 95834     | \$ 498.20          |
| 18 | Susan Sloan                             | 103 Ashley Avenue<br>Woodland, CA 95695                | \$ 199.28          |
| 19 | Peggy Vaquera                           | 9436 Mainline Drive<br>Elk Grove, CA 95624             | \$ 454.60          |

1 Karen Wasilewski 938 Bradford Way \$ 249.10  
2 Benicia, CA 94510

3 Total \$8,998.10

4 The parties acknowledge that there were other victims who  
5 realized losses in this case. U.S. Department of Labor Special  
6 Agent Merry Adams attempted to determine current addresses for the  
7 remaining victims but was unable to do so.<sup>1</sup>

8 April 5, 2005 /s/ Derek Messenger  
9 Date DEREK MESSENGER  
Divertee

10 April 5, 2005 /s/ Johnny Griffin, III  
11 Date JOHNNY GRIFFIN, III  
Counsel for Derek Messenger

12 April 8, 2005  
13 Date MCGREGOR W. SCOTT  
United States Attorney

14  
15 By/s/ Laurel D. White  
LAUREL D. WHITE  
Assistant U.S. Attorney

16  
17 April 12, 2005 /s/ Gina Lee Faubion  
18 Date GINA LEE FAUBION  
19 Pre-trial Diversion  
Coordinator or Program  
20 Supervisor

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25  
26 <sup>1</sup>Those victims include: Dennis Ayson (loss \$363.33), Shirley  
27 Berger (loss \$180.64), Tenisha Dosty (loss \$33.54), Jeanne Henry  
28 (deceased, loss \$100.66), Leah Lingafeldt (loss \$793.76), Tomi Radke  
(loss \$268.32), Rhoeda Sinclaiare (loss \$448.38), and Benita Ventura  
(loss \$66.02).

**ORDER**

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3 WHEREFORE, FOR THE REASONS STATED ABOVE IN THE STIPULATED  
4 AMENDMENT TO DIVERSION AGREEMENT OF DEREK MESSENGER, and good cause  
5 appearing, this court orders that, the division of restitution in  
6 the above-entitled case, shall be paid to the named victims  
7 identified above, and in amounts representing each victim's share of  
8 the total loss of \$8,998.10. The Court further orders that  
9 restitution shall be paid only to those named victims whose  
10 addresses have been confirmed by the government. The Court orders  
11 that this amendment to the diversion agreement be made a part of the  
12 original diversion agreement, as it is fully set forth herein.

13 **IT IS SO ORDERED.** \* The United States shall supply the payment  
14 schedule to the Clerk's Office.

15 Dated: 4/19/05

16 /s/ Gregory G. Hollows

17 HON. GREGORY G. HOLLOWS  
18 U.S. Magistrate Judge

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