EXHIBIT 1

From: Laws, Kendall
To: Jeremy Delicino; Jon Williams; Paul Cassell
Subject: Franklin/Chilcoat
Date: Wednesday, April 18, 2018 5:13:28 PM

Gentlemen:

In consideration of our telephone conversation yesterday, I have spent the day talking to other prosecutors as well as reviewing other information.

As I'm sure you know, some of the content of your proposed Reply brief violate the rules of criminal procedure, the rules of professional conduct and the rules of civility. I trust that at the end of the day, each of you know that you are required to be truthful and honest in all of your pleadings and I know, based on our phone call yesterday, that you are aware that some of the content of your Reply brief is not truthful or honest. If you choose to file that document as it is written, you do so at your own peril. I will consider all options, including the options available in Rule 11(b). This is not a threat, it is simply notice.

I want to make sure that I put my most recent settlement offer in writing and expect that it will be shared with your clients in a timely manner. This offer reflects a fair and reasonable resolution to the matter and I will give you until 5:00 pm (Utah Time) on Friday to accept the offer or it will be removed from the table. If this case proceeds to trial, I intend to place, on the record, statements from your clients acknowledging that they have been informed of the offer presented here.

The offer is as follows:

Mr. Franklin pleads GUILTY to Count 1 as a Class A misdemeanor and Count 2 as charged (Class A Misdemeanor). I will agree to 18 months of probation, no jail time, a reasonable fine, and he will not be on State of Utah Land for the entire term of his probation.

The charges against Ms. Chilcoat will be dismissed.

I remind you that you have a legal obligation to your client to fully and fairly explain to them any and all settlement offers.

Mr. Odell and his animals have a right to be left alone and unmolested. My obligation to him as a crime victim and my obligation to the citizens of San Juan County remains.

This offer is fair and strikes a proper balance. Moving forward, all communications will be in writing.

Please get back to me prior to 5:00 pm on Friday April 20, 2018.

Kendall G. Laws
San Juan County Attorney
(435) 587-2128

EXHIBIT 2

From: Jeremy Delicino
To: Laws, Kendall
Cc: Paul Cassell
Subject: Acceptance of Offer
Date: Wednesday, April 18, 2018 10:23:09 PM

Dear Kendall,

Paul Cassell and I write on behalf of our client, Rosalie Jean Chilcoat. She was delighted to learn this afternoon that you have agreed to dismissal of the charges against her. She is understandably quite relieved, both because of the resolution and because she has now begun to make arrangements to travel to Africa without worrying about any charges. Per your offer below, she hereby accepts your offer that "The charges against Ms. Chilcoat will be dismissed." See email below.

As you can imagine, Professor Cassell's telephone call with her this evening was lengthy – and obviously addresses your concern that the defense team communicate to the client your plea offer to her, as you indicated below. He discussed whether we should also ask you for other conditions to be attached to your dismissal, but have decided to accept the offer as you have written it. Accordingly, Professor Cassell and I have stopped exploring possible defenses for her. And we have also stopped working on our reply in support of motion to quash. In light of your offer, which we accept, Professor Cassell, who also represents Mark, has begun reworking the motion so that it will apply just to Mark Franklin – the need for any such motion for Rose having evaporated.

On behalf of Rose, please understand how much she appreciates your agreement to dismiss the charges against her. As you know, from the beginning, she has maintained her absolute innocence of all charges. And in our reply brief, we were going to further establish – beyond any doubt – that she has been unjustly charged. We appreciate you doing the right thing and simply dismissing the charges now. That has brought a huge sense of emotional relief to her.

Please let Professor Cassell and I know when the dismissal will be filed and if there is anything we can do to assist the process. In view of the collateral consequences of the pending charges, we ask you to file the dismissal by 4:00 p.m. tomorrow, Thursday, April 19.

Sincerely,

Jeremy Delicino
Counsel for Rosalie Jean Chilcoat

From: Laws, Kendall [mailto:klaws@sanjuancounty.org]
Sent: Wednesday, April 18, 2018 5:13 PM
To: Jeremy Delicino <jeremy@jeremydelicino.com>; Jon Williams <jwilliam@lawyer.com>; Paul Cassell <cassellp@law.utah.edu>
Subject: Franklin/Chilcoat

Gentlemen:

In consideration of our telephone conversation yesterday, I have spent the day talking to other prosecutors as well as reviewing other information.

As I'm sure you know, some of the content of your proposed Reply brief violate the rules of criminal procedure, the rules of professional conduct and the rules of civility. I trust that at the end of the day, each of you know that you are required to be truthful and honest in all of your pleadings and I know, based on our phone call yesterday, that you are aware that some of the content of your Reply brief is not truthful or honest. If you choose to file that document as it is written, you do so at your own peril. I will consider all options, including the options available in Rule 11(b). This is not a threat, it is simply notice.

I want to make sure that I put my most recent settlement offer in writing and expect that it will be shared with your clients in a timely manner. This offer reflects a fair and reasonable resolution to the matter and I will give you until 5:00 pm (Utah Time) on Friday to accept the offer or it will be removed from the table. If this case proceeds to trial, I intend to place, on the record, statements from your clients acknowledging that they have been informed of the offer presented here.

The offer is as follows:

Mr. Franklin pleads GUILTY to Count 1 as a Class A misdemeanor and Count 2 as charged (Class A Misdemeanor). I will agree to 18 months of probation, no jail time, a reasonable fine, and he will not be on State of Utah Land for the entire term of his probation.

The charges against Ms. Chilcoat will be dismissed.

I remind you that you have a legal obligation to your client to fully and fairly explain to them any and all settlement offers.

Mr. Odell and his animals have a right to be left alone and unmolested. My obligation to him as a crime victim and my obligation to the citizens of San Juan County remains.

This offer is fair and strikes a proper balance. Moving forward, all communications will be in writing.

Please get back to me prior to 5:00 pm on Friday April 20, 2018.

Kendall G. Laws
San Juan County Attorney
(435) 587-2128

EXHIBIT 3

From: Kendall Laws
To: Jeremy Delicino
Cc: Paul Cassell
Subject: Re: Acceptance of Offer
Date: Thursday, April 19, 2018 6:22:19 AM

Jeremy and Paul:

Since this case has been a combined effort from the beginning between Jeremy and Jon, this is a package deal offer. It is accepted in total or not at all between the defendants. Perhaps my wording could have been more clear but that is the purpose behind the offer, resolve it the case entirely.

Regards

Kendall

Sent from my iPhone

On Apr 18, 2018, at 10:22 PM, Jeremy Delicino <Jeremy@jeremydelicino.com> wrote:

> Dear Kendall,
>
> Paul Cassell and I write on behalf of our client, Rosalie Jean Chilcoat. She was delighted to learn this afternoon that you have agreed to dismissal of the charges against her. She is understandably quite relieved, both because of the resolution and because she has now begun to make arrangements to travel to Africa without worrying about any charges. Per your offer below, she hereby accepts your offer that "The charges against Ms. Chilcoat will be dismissed." See email below.
>
> As you can imagine, Professor Cassell's telephone call with her this evening was lengthy – and obviously addresses your concern that the defense team communicate to the client your plea offer to her, as you indicated below. He discussed whether we should also ask you for other conditions to be attached to your dismissal, but have decided to accept the offer as you have written it. Accordingly, Professor Cassell and I have stopped exploring possible defenses for her. And we have also stopped working on our reply in support of motion to quash. In light of your offer, which we accept, Professor Cassell, who also represents Mark, has begun reworking the motion so that it will apply just to Mark Franklin – the need for any such motion for Rose having evaporated.
>
> On behalf of Rose, please understand how much she appreciates your agreement to dismiss the charges against her. As you know, from the beginning, she has maintained

her absolute innocence of all charges. And in our reply brief, we were going to further establish – beyond any doubt – that she has been unjustly charged. We appreciate you doing the right thing and simply dismissing the charges now. That has brought a huge sense of emotional relief to her.

Please let Professor Cassell and I know when the dismissal will be filed and if there is anything we can do to assist the process. In view of the collateral consequences of the pending charges, we ask you to file the dismissal by 4:00 p.m. tomorrow, Thursday, April 19.

Sincerely,

Jeremy Delicino

Counsel for Rosalie Jean Chilcoat

From: Laws, Kendall [mailto:klaws@sanjuancounty.org]
Sent: Wednesday, April 18, 2018 5:13 PM
To: Jeremy Delicino <jeremy@jeremydelicino.com>; Jon Williams <jwilliam@lawyer.com>; Paul Cassell <cassellp@law.utah.edu>
Subject: Franklin/Chilcoat

Gentlemen:

In consideration of our telephone conversation yesterday, I have spent the day talking to other prosecutors as well as reviewing other information.

As I'm sure you know, some of the content of your proposed Reply brief violate the rules of criminal procedure, the rules of professional conduct and the rules of civility. I trust that at the end of the day, each of you know that you are required to be truthful and honest in all of your pleadings and I know, based on our phone call yesterday, that you are aware that

some of the content of your Reply brief is not truthful or honest. If you choose to file that document as it is written, you do so at your own peril. I will consider all options, including the options available in Rule 11(b). This is not a threat, it is simply notice.

I want to make sure that I put my most recent settlement offer in writing and expect that it will be shared with your clients in a timely manner. This offer reflects a fair and reasonable resolution to the matter and I will give you until 5:00 pm (Utah Time) on Friday to accept the offer or it will be removed from the table. If this case proceeds to trial, I intend to place, on the record, statements from your clients acknowledging that they have been informed of the offer presented here.

The offer is as follows:

Mr. Franklin pleads GUILTY to Count 1 as a Class A misdemeanor and Count 2 as charged (Class A Misdemeanor). I will agree to 18 months of probation, no jail time, a reasonable fine, and he will not be on State of Utah Land for the entire term of his probation.

The charges against Ms. Chilcoat will be dismissed.

I remind you that you have a legal obligation to your client to fully and fairly explain to them any and all settlement offers.

Mr. Odell and his animals have a right to be left alone and unmolested. My obligation to him as a crime victim and my obligation to the citizens of San Juan County remains.

This offer is fair and strikes a proper balance. Moving forward, all communications will be in writing.

Please get back to me prior to 5:00 pm on Friday April 20, 2018.

Kendall G. Laws

San Juan County Attorney

(435) 587-2128

EXHIBIT 4

From: Jeremy Delicino
To: Laws, Kendall; Paul Cassell
Subject: Acceptance of Offer
Date: Thursday, April 19, 2018 9:22:43 AM
Attachments: Reply-Motion-to-Quash-Draft-Franklin Only.doc

Dear Kendall,

If I understand your last email correctly, I am extremely concerned about what you have just said in response to Rose's acceptance of your plea offer.

Yesterday, because I was flying to New York, co-counsel Paul Cassell spoke to my client, Rose Chilcoat, about your offer of dismissal. I will not reveal any attorney-client communications. But I can say that, as you requested in your email, she was advised of the advantages and disadvantages of accepting the naked dismissal (without further conditions) of the charges against her. After that discussion, again without revealing any confidences, she advised that she was authorizing the defense team to accept the offer. Thereafter, I I reviewed this decision, with which I agreed, and then formally accepted the plea offer on Rose's behalf in writing as you had directed.

In light of that written acceptance, the defense directed Rose's investigator to stop working on the case. The defense spent approximately one hour, working after midnight, revising the Motion to Quash Reply so that it now applies only to Mark. See attached copy of revised motion to quash.

In light of these facts, I have to say it was disturbing to read your email this morning. This email appears to retroactively and dramatically change the terms of the plea offer to Rose. While there was no mention of this fact in your email last night, if I am reading your email this morning correctly, you are now attempting to convert the offer into what is commonly-referred to as a "wired plea" requiring other conditions before Rose could accept the plea.

Such pleas must be carefully constructed to avoid unconstitutional coercion. The United States Supreme Court, while not ruling squarely on the constitutionality of such agreements, has pointed out that "a prosecutor's offer during plea bargaining of adverse or lenient treatment for some person *other* than the accused ... might pose a greater danger of inducing a false guilty plea by skewing the assessment of the risks a defendant must consider." *Bordenkircher v. Hayes,* 434 U.S. 357, 364 n. 8 (1978). Where the state threatens prosecution of one with whom the defendant has familial ties or other close bonds, the threat of coercion is much greater. *United States v. Carr,* 80 F.3d 413, 416-417 (10th Cir.1996). Of special concern with regard to such agreements is that one defendant, who hopes to obtain the more lenient sentence, might coerce another defendant to accept the package deal. *See, e.g., United States v. Castello,* 724 F.2d 813 (9th Cir.1984). It has been held that a plea agreement

entailing leniency to a third party imposes a special responsibility on the trial court to ascertain the voluntariness of the plea because of its coercive potential. *See, e.g., United States v. Whalen,* 976 F.2d 1346 (10th Cir.1992).

In light of these facts, I was startled to see you two-sentence email this morning, which appears in the email chain below. You refer to the fact that this case has been a "combined effort between Jeremy and Jon" – I am not certain what that means. To the contrary, my understanding was that the reason that there were two separate defense attorneys in this matter – Jon *and* I – was precisely because there might be points in this case at which the interests of the two clients would diverge. That is why, for example, both of us *separately* questioned witnesses at the preliminary hearing – notably, BLM permittee Odell. It has always been my understanding, as counsel for Rose, that the presence of additional separate counsel for Mark was required, and that it why the final acceptance of the plea offer last night was only made through separate legal counsel for Rose.

Your email also states: "Perhaps my wording could have been more clear but is the purpose behind the offer, resolve it the case entirely." With all due respect, I do not believe that the offer was unclear in any way. Looking through your email, it begins with unsupported attacks on the professionalism of the three defense counsel on this case – including an unsupported and entirely false allegation that some of the content of the reply "is not the truth or honest." The email then threatens us: "If you choose to file that document as it is written you do so at your own peril."

Following this threat to the defense counsel in this case, you then state:

> I want to make sure that I put my most recent settlement offer in writing and expect that it will be shared with your clients in a timely manner. This offer reflects a fair and reasonable resolution to the matter and I will give you until 5:00 pm (Utah Time) on Friday to accept the offer or it will be removed from the table. If this case proceeds to trial, I intend to place, on the record, statements from your clients acknowledging that they have been informed of the offer presented here.

In less than an hour, we had forwarded the email to the two clients. You described the offer to each of them specifically as follows:

> The offer is as follows:
>
> Mr. Frankly pleads GUILTY to Count 1 as a Class A misdemeanor and Count 2 as charged (Class A Misdemeanor).

> I will agree to 18 months of probation, no jail time, a reasonable fine, and he will not be on State of Utah Land for the entire term of his probation.
>
> The charges against Ms. Chilcoat will be dismissed.
>
> I remind you that you have a legal obligation to your client to fully and fairly explain to them any and all settlement offers. . . .
>
> This offer is fair and strikes a proper balance. Moving forward, all communications will be in writing.
>
> Please get back to me prior to 5:00 pm on Friday April 20, 2018.

You will notice several things about the way this offer is written. First, you have currently filed against Ms. Chilcoat three charges exposing her to twenty-one years in prison. You now propose to resolve the case against her by a straight dismissal of charges – an extraordinary reduction reflecting the fact, we believe, that the charges against her lack any basis.

Second, your email was addressed to both counsel for Rose and for Mark – with the use of the singular term "client." You stated (again threateningly): "I remind you that you have a legal obligation to **your client** to fully and fairly explain to them any and all settlement offers."

In light of that fact, the plea offer was explained to Rose – the "client" – and she accepted. You placed no restrictions on that acceptance.

Your belated effort to dramatically change the terms of the arrangement is improper. Most important, in "wired plea" cases involving leniency toward a third party, or a promise not to prosecute a third party, the government must act in good faith. To act in good faith, the government must have probable cause to charge the third party at the time the defendant is offered leniency for the third party, or at the time the defendant is threatened that the third party will be charged. *United States v. Wright,* 43 F.3d 491, 499 (10th Cir. 1994); *Martin v. Kemp,* 760 F.2d 1244, 1247-48 (11th Cir.1985); *United States v. Diaz,* 733 F.2d 371, 375 (5th Cir.1984); *Harman v. Mohn,* 683 F.2d 834 (4th Cir.1982); *United States v. Canino,* No. 96-271, 1997 WL 141864 (E.D. Penn March 25, 1997). As you know from our pending motion to quash – as well as our draft reply memorandum previously sent to you – the charges against Rose are not well-founded. You also have acknowledged that "the right thing to do" is not be involved in this case – and I view the dismissal of charges against Rose as your first step in that direction.

Given all these facts and this sensitivity with which wired pleas are handled by the

courts – particularly in a delicate husband and wife setting – I had understood your offer *not* to be a wired plea. But if there was any confusion on this point, your email to us this morning further states that "[p]erhaps my wording could have been more clear . . . ." In light of that fact, courts construe any ambiguity in an offer against the Government. *State v. Patience*, 944 P.2d at 387 ("[I]n interpreting plea agreements or determining their validity, courts may in certain circumstances hold the government to a higher standard than the defendant.").

The bottom line is that you sent an email that began by threatening defense counsel. You then admonished us to ensure that your plea offer was conveyed to and discussed with each of the two clients. Your plea offer was not a "wired plea" – and any such plea would, particularly in the circumstances of this case, be highly coercive. Ms. Chilcoat accepted the plea arrangement offered to her. As you instructed, I proceeded in writing to accept the plea. The defense thereafter took actions in detrimental reliance on your offer.

To avoid any prejudice to Rose, you have until 4:00 p.m. today, April 19, 2018, to fulfill the terms of the agreement by dismissing the charges against her. If you have not done so by that time, I intend to file a motion to enforce the agreement as to her.

Of course, Mr. Franklin's interests must be considered separately. He will respond separately and, I anticipate, will be filing a motion to recuse your Office, both on grounds of the existence of a conflict requiring recusal and because of your agreement to do so.

Sincerely,

Jeremy Delicino for Rose Chilcoat