



U.S. Department of Justice

*United States Attorney
District of New Jersey*

970 Broad Street, 7th floor
Newark, New Jersey 07102

973-645-2700

December 9, 2015

Marc Agnifilo
Brafman & Associates, P.C.
767 Third Avenue
26th Floor
New York, New York 10017

Re: Plea Agreement with Bret Ostrager
Criminal Number 15-399 (SRC)

Dear Counsel:

This letter sets forth the plea agreement between your client, Bret Ostrager, and the United States Attorney for the District of New Jersey ("this Office"). This offer will expire if the defendant's guilty plea is not entered in Court on or before December 17, 2015.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Bret Ostrager to Counts 1, 2 and 5 of the Indictment, Crim. No. 15-399 (SRC) which charge (i) conspiracy to violate the Federal Anti-Kickback Statute and the Travel Act by accepting bribes, contrary to 42 U.S.C. § 1320a-7b(b)(1)(A) and N.J.S.A. § 2C:21-10 and 18 U.S.C. § 1952(a)(1) and (a)(3), in violation of 18 U.S.C. § 371 (Count One), (ii) violation of the Federal Anti-Kickback Statute, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A) (Count Two), and (iii) use of the mails and facilities in interstate commerce and interstate travel to promote, carry on and facilitate commercial bribery, contrary to N.J.S.A. § 2C:21-10 and in violation of 18 U.S.C. § 1952(a)(1) and (a)(3)(Count Five). If Bret Ostrager enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Bret Ostrager for the acceptance of bribes for the referral of blood specimens to Biodiagnostic

Laboratory Services, LLC from February 2011 through April 2013. In addition, if Bret Ostrager fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss Counts 3-4 and 6-8 of the Indictment, Crim. No. 15-399 (SRC). However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Bret Ostrager may be commenced against him, notwithstanding the expiration of the limitations period after Bret Ostrager signs the agreement.

Sentencing

The violation of 18 U.S.C. § 371 to which Bret Ostrager agrees to plead guilty carries a statutory maximum prison sentence of five years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Bret Ostrager is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Bret Ostrager ultimately will receive.

Further, in addition to imposing any other penalty on Bret Ostrager, the sentencing judge: (1) will order Bret Ostrager to pay an assessment of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Bret Ostrager to pay restitution pursuant to 18 U.S.C. § 3663 et seq., 18 U.S.C. § 3563(b)(2), or 18 U.S.C. § 3583(d); (3) may order Bret Ostrager, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offenses; (4) must order forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 853, and 28 U.S.C. § 2461; and (5) pursuant to 18 U.S.C. § 3583, may require Bret Ostrager to serve a term of supervised release of not more than three years, which will begin at the expiration of any term of imprisonment imposed. Should Bret Ostrager be placed on a term of

supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Bret Ostrager may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Bret Ostrager by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Bret Ostrager's activities and relevant conduct with respect to this case.

Stipulations

This Office and Bret Ostrager agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Bret Ostrager from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Bret Ostrager waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

As part of his acceptance of responsibility, Bret Ostrager admits the forfeiture allegations of the Indictment and agrees to forfeit to the United States, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 21 U.S.C. § 853 and 28 U.S.C. § 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the violation of 18 U.S.C. § 1952(a)(3) as charged in the Indictment, including but not limited to a sum of money equal to \$101,271.00, and all property traceable to such property, for a total money judgment of \$101,271.00 (the "Money Judgment"). On or before the date he enters his plea of guilty pursuant to this agreement, Bret Ostrager shall pay the Money Judgment in full by certified or bank check payable to the United States Marshals Service, with the criminal docket number noted on the face of the check, and delivered to the United States Attorney's Office.

If the Forfeiture Money Judgment is not paid on or before the date Bret Ostrager enters his plea of guilty pursuant to this agreement, interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Furthermore, if Bret Ostrager fails to pay any portion of the Money Judgment on or before the date of his guilty plea, Bret Ostrager consents to the forfeiture of any other property of his, including substitute assets, in full or partial satisfaction of the Money Judgment, until paid in full.

Bret Ostrager agrees to consent to the entry of a Consent Judgment and Order of Forfeiture for the Money Judgment, and any further orders that may be necessary to enforce the Money Judgment, and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Bret Ostrager understands that the imposition of the Money Judgment is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

It is further understood that any forfeiture of Bret Ostrager's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture.

Bret Ostrager hereby waives any and all claims that the forfeiture constitutes an excessive fine and agrees that the forfeiture does not violate the Eighth Amendment.

Bret Ostrager represents that he has disclosed all of his assets to the United States on the Financial Disclosure Statement dated _____. Bret Ostrager agrees that if this Office determines that Bret Ostrager has intentionally failed to disclose assets on that Financial Disclosure Statement, that failure constitutes a material breach of this agreement. In addition, Bret Ostrager consents to the administrative, civil, and/or criminal forfeiture of his interests in any assets that he failed to disclose on the Financial Disclosure Statement. Should undisclosed assets that the defendant owns or in which the defendant has an interest be discovered, Bret Ostrager knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets. Bret Ostrager further agrees to execute any documents necessary to effectuate the forfeiture of said assets.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offenses regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Bret Ostrager. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil or administrative proceeding against Bret Ostrager.

No provision of this agreement shall preclude Bret Ostrager from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that Bret Ostrager received constitutionally ineffective assistance of counsel.

No Other Promises

This agreement constitutes the plea agreement between Bret Ostrager and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

Paul J. Fishman
United States Attorney



By: Joseph N. Minish
Assistant U.S. Attorney

APPROVED:



Jacob T. Elberg, Unit Chief
Criminal Division

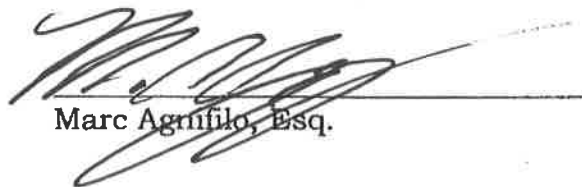
I have received this letter from my attorney, Marc Agnifilo, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charges, sentencing, stipulations, waiver, forfeiture, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:


Bret Ostrager

Date: 12/9/2015

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charges, sentencing, stipulations, waiver, forfeiture, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.


Marc Agnifilo, Esq.

Date: 12/9/15

Plea Agreement with Bret Ostrager

Schedule A

1. This Office and Bret Ostrager recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Bret Ostrager nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Bret Ostrager within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and Bret Ostrager further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2015, applies in this case.

COUNT ONE

3. The applicable guideline for a violation of 18 U.S.C. § 371 is U.S.S.G. § 2X1.1.

4. The Base Offense Level for that guideline is the Base Offense Level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended conduct that can be established with reasonable certainty.

5. The applicable guideline for Commercial Bribery is U.S.S.G. § 2B4.1. The Base Offense Level is 8. U.S.S.G. § 2B4.1(a).

6. The value of the improper benefit to be conferred was approximately \$818,736.74. It was thus more than \$550,000, but was not more than \$1,500,000. This results in an increase of 14 levels. U.S.S.G. §§ 2B4.1(b)(1)(B), 2B1.1(b)(1)(H).

7. Thus, the Adjusted Offense Level for Count One is 22.

COUNT TWO

8. The applicable guideline for a violation of 42 U.S.C. § 1320a-7b(b)(1)(A) is U.S.S.G. § 2B4.1. The Base Offense Level is 8. U.S.S.G. § 2B4.1(a).

9. The value of the improper benefit to be conferred was approximately \$818,736.74. It was thus more than \$550,000, but was not more than \$1,500,000. This results in an increase of 14 levels. U.S.S.G. §§ 2B4.1(b)(1)(B), 2B1.1(b)(1)(H).

10. Thus, the Adjusted Offense Level for Count One is 22.

COUNT FIVE

11. The applicable guideline for a violation of 18 U.S.C. § 1952(a)(1) and (a)(3) is U.S.S.G. § 2E1.2. The Base Offense Level is the offense level applicable to the unlawful activity in respect to which the travel or transportation was undertaken. U.S.S.G. § 2E1.2(a)(2).

12. The applicable guideline for Commercial Bribery is U.S.S.G. § 2B4.1. The Base Offense Level is 8. U.S.S.G. § 2B4.1(a).

13. The value of the improper benefit to be conferred was approximately \$818,736.74. It was thus more than \$550,000, but was not more than \$1,500,000. This results in an increase of 14 levels. U.S.S.G. §§ 2B4.1(b)(1)(B), 2B1.1(b)(1)(H).

14. Thus, the Adjusted Offense Level for Count Five is 22.

GROUPING ANALYSIS

15. The Government and Bret Ostrager agree that Counts 1, 2, and 5 are grouped together into a single group because those counts involve "substantially the same harm" under U.S.S.G. § 3D1.2. The offense level for this group, pursuant to U.S.S.G. § 3D1.3 is the highest offense level of the counts in the Group, or 22. Accordingly, the combined offense level is 22.

ADDITIONAL FACTORS

16. Bret Ostrager abused a position of public or private trust in a manner that significantly facilitated the commission of the relevant criminal activity, pursuant to U.S.S.G. § 3B1.3. This results in an increase of 2 levels.

17. As of the date of this letter, Bret Ostrager has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offenses charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Bret Ostrager's acceptance of responsibility continues through the date of sentencing. U.S.S.G. § 3E1.1(a).

18. The Government will not make a motion pursuant to U.S.S.G. § 3E1.1(b).

19. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Bret Ostrager is 22 (the "agreed total Guidelines offense level").

20. The parties do not agree as to the applicability of U.S.S.G. § 5H1.6, and both sides reserve the right to argue their respective positions at sentencing. The Government's position is that a downward departure based on U.S.S.G. § 5H1.6 is not warranted, and Bret Ostrager's position is that a downward departure based on U.S.S.G. § 5H1.6 is warranted. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance other than U.S.S.G. § 5H1.6. The parties further agree that if the Court finds that a downward departure based on U.S.S.G. § 5H1.6 is not warranted, a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

21. Bret Ostrager knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 22. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 22. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive

the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

22. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.