



U.S. Department of Justice
United States Attorney
District of New Jersey

Daniel Shapiro
Assistant United States Attorney

970 Broad Street, Suite 700
Newark, New Jersey 07102

Direct Dial: (973) 353-6087
Facsimile: (973) 297-2045

March 28, 2016

Joshua P. Cohn, Esq.
Cohn Lifland Pearlman
Herrmann & Knopf LLP
250 Pehle Avenue – Suite 401
Saddle Brook, New Jersey 07663

Re: Plea Agreement with DEVIN McARTHUR

Dear Mr. Cohn:

This letter sets forth the plea agreement between your client, DEVIN McARTHUR, and the United States Attorney for the District of New Jersey (“this Office”). This plea offer will expire if an executed copy is not received by this Office by 5 p.m. on April 15, 2016. Thereafter, the terms available to your client under this agreement are withdrawn and may not be relied on at any stage of your client’s trial or at any sentencing proceeding.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from DEVIN McARTHUR to Count Two of the Indictment which charges him with conspiring to commit fraud wire fraud, contrary to Title 18, United States Code, Section 1343 in violation of Title 18, United States Code, Section 1349. If DEVIN McARTHUR enters a guilty plea and is sentenced on this charge, this Office will not initiate any further criminal charges against DEVIN McARTHUR for a conspiracy to steal the confidential business information of Corporate Victim #4 from in or about February 2014, through in or about February 2015, as alleged in the Indictment. In addition, if DEVIN McARTHUR fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss Count One of the Indictment. 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, DEVIN McARTHUR 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 DEVIN McARTHUR may be commenced against him, notwithstanding the expiration of the limitations period after DEVIN McARTHUR signs the agreement.

Sentencing

With respect to count one of the Indictment, the violation of 18 U.S.C. § 1349 to which DEVIN McARTHUR agrees to plead guilty carries a statutory maximum term of 20 years' imprisonment 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 DEVIN McARTHUR 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 DEVIN McARTHUR ultimately will receive.

Further, in addition to imposing any other penalty on DEVIN McARTHUR, the sentencing judge: (1) pursuant to 18 U.S.C. § 3013, will order DEVIN McARTHUR to pay an assessment of \$100 per count, which assessment must be paid by the date of sentencing; (2) pursuant to 18 U.S.C. § 3663A et seq., must order DEVIN McARTHUR to pay restitution; (3) pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, must order forfeiture; and (4) pursuant to 18 U.S.C. § 3583, may require DEVIN McARTHUR to serve a term of supervised release of not more than three years, which terms of supervised release will begin at the expiration of any term of imprisonment imposed. Should DEVIN McARTHUR be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, DEVIN McARTHUR 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 DEVIN McARTHUR 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 DEVIN McARTHUR's activities and relevant conduct with respect to this case.

Stipulations

This Office and DEVIN McARTHUR 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 DEVIN McARTHUR 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 the Government'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 DEVIN McARTHUR waive certain rights to file an appeal, collateral attack, writ, or motion after resentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Immigration Consequences

DEVIN McARTHUR understands that, if he is not a citizen of the United States, his guilty plea to the charged offenses 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. DEVIN McARTHUR understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. DEVIN McARTHUR 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. DEVIN McARTHUR understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, DEVIN McARTHUR 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 DEVIN McARTHUR. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service and Immigration and Customs Enforcement), or any third party from initiating or prosecuting any civil or administrative proceeding against DEVIN McARTHUR.

No provision of this agreement shall preclude DEVIN McARTHUR from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that DEVIN McARTHUR's guilty plea or sentence resulted from constitutionally ineffective assistance of counsel.

No Other Promises

This agreement constitutes the plea agreement between DEVIN McARTHUR 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:

DANIEL SHAPIRO
Assistant U.S. Attorneys

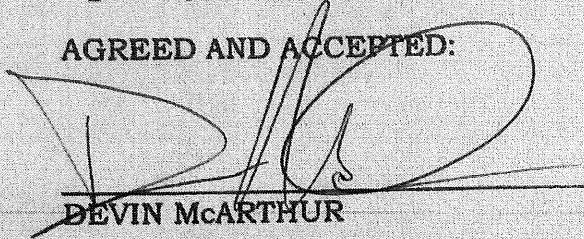
Approved:



Paul Murphy
Chief, Economic Crimes Unit

I have received this letter from my attorney, Joshua P. Cohn, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charges, sentencing, forfeiture, stipulations, waiver, 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.

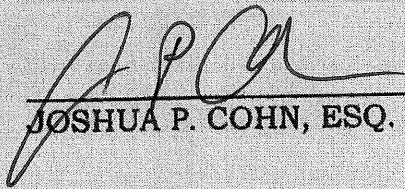
AGREED AND ACCEPTED:



DEVIN McARTHUR

Date: 4-15-2016

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



JOSHUA P. COHN, ESQ.

Date: 5/4/16

Plea Agreement with DEVIN McARTHUR

SCHEDULE A

1. This Office and DEVIN McARTHUR recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and DEVIN McARTHUR nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence DEVIN McARTHUR within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and DEVIN McARTHUR 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.

3. The applicable guideline is U.S.S.G. § 2X1.1, which provides that the base offense level for any conspiracy is the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. Because the substantive offense is wire fraud, the applicable guideline is U.S.S.G. § 2B1.1.

4. Under U.S.S.G. § 2B1.1(a)(1), the base offense level is 7 because conviction of the offense charged in Count Two of the Indictment carries a statutory maximum term of imprisonment of twenty years or more.

5. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(1)(B) applies because the relevant loss amount is more than \$6,500 but less than \$15,000. This results in an increase of 2 levels.

6. The total offense level is 9.

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

8. In accordance with the above, the parties agree that the total Guidelines offense level applicable to DEVIN McARTHUR is 7 (the “agreed total Guidelines offense level”).

9. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

10. DEVIN McARTHUR 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. 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. 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.

11. 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.