



U.S. Department of Justice

Andrew E. Lelling
United States Attorney
District of Massachusetts

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Boston, Massachusetts 02210

May 29, 2018

Jane Peachy, Esq.
Federal Public Defender
51 Sleeper Street
Boston, MA 02210

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

Re: United States v. Scott J. Wolas, a/k/a E.J.G., a/k/a D.P.,
a/k/a F.A., a/k/a E.A., a/k/a C.S.

Criminal No. 17-10198-S1-FDS

Dear Ms. Peachy:

The United States Attorney for the District of Massachusetts (“the U.S. Attorney”) and your client, Scott J. Wolas, a/k/a E.J.G., D.P., F.A., E.A. and C.S. (“Defendant”), agree as follows with respect to the above-referenced case:

1. Change of Plea

At the earliest practicable date, Defendant shall waive indictment and plead guilty to all counts of the Superseding Information charging him with: wire fraud, in violation of 18 U.S.C. § 1343 (Counts One through Seven); aggravated identity theft, in violation of 18 U.S.C. § 1028A (Count Eight); misuse of a Social Security number, in violation of 42 U.S.C. § 408(a)(7)(B)(Count Nine); and tax evasion, in violation of 26 U.S.C. § 7201 (Count Ten). Defendant expressly and unequivocally admits that he committed the crimes charged in Counts One through Ten of the Superseding Information, did so knowingly, intentionally, and willfully, and is in fact guilty of those offenses. Defendant also agrees to waive venue, to waive any applicable statute of limitations, and to waive any legal or procedural defects in the Superseding Information.

The U.S. Attorney agrees not to bring additional charges against Defendant based on the conduct underlying and in relation to the crimes charged in the Superseding Information that is known to the U.S. Attorney at the time of this agreement.

2. Penalties

Defendant faces the following mandatory minimum and maximum penalties on each count of the Superseding Information: Counts One through Seven of the Superseding Information are punishable by incarceration for a period of 20 years; supervised release for a period of 3 years; a fine of \$250,000 or twice the gross gain/loss whichever is greater; a mandatory special assessment of \$100; restitution; and forfeiture to the extent charged in the Superseding Information. Count Eight of the Superseding Information is punishable by a mandatory term of incarceration for a period of 2 years, which must be served consecutively to any term of imprisonment imposed on Counts One through Seven; supervised release for a period of 1 year; a fine of \$250,000 or twice the gross gain/loss whichever is greater; restitution, and a mandatory special assessment of \$100. Count Nine of the Superseding Information is punishable by incarceration for 5 years; supervised release for a period of 3 years; a fine of \$250,000, or twice the gross gain/loss, whichever is greater; a mandatory special assessment of \$100; and restitution. Count Ten of the Superseding Information is punishable by incarceration for a period of 5 years; supervised release for a period of 3 years; a fine of \$250,000, or twice the gross gain/loss, whichever is greater; the costs of prosecution; a mandatory special assessment of \$100; and restitution.

3. Sentencing Guidelines

The sentence to be imposed upon Defendant is within the discretion of the District Court (“Court”), subject to the statutory mandatory minimum and maximum penalties set forth above and the provisions of the Sentencing Reform Act, and the advisory United States Sentencing Guidelines (“USSG” or “Guidelines”). While the Court may impose a sentence up to and including the statutory maximum term of imprisonment and statutory maximum fine, it must consult and take into account the USSG and the other factors set forth in 18 U.S.C. § 3553(a) in imposing a sentence.

The parties agree that Defendant’s total offense level under the USSG (prior to any adjustment for acceptance of responsibility and using the grouping principles of USSG § 3D1.1) is calculated as follows:

Group I: Counts One through Seven-18 U.S.C. § 1343

- (a) In accordance with USSG § 2B1.1(a)(1), Defendant’s base offense level is 7 because Defendant has been convicted of an offense referenced to this guideline, (i.e., 18 U.S.C. § 1343), and because that offense has a statutory maximum term of imprisonment of 20 years or more.
- (b) In accordance with USSG § 2B1.1(b)(1)(I), Defendant’s offense level is increased by 16 because the loss is more than \$1,500,000 but less than \$3,500,000. Defendant agrees that due to the offenses charged in Counts One through Seven, he is responsible for wire fraud losses totaling approximately \$1,787,813.

- (c) In accordance with USSG § 2B1.1(b)(2)(A), Defendant's offense level is increased by 2 because the offense involved 10 or more victims.

This application of the guidelines results in an Offense Level of 25 for Group I.

Group II: Count Nine-42 U.S.C. § 408(a)(7)(B)

- (a) In accordance with USSG § 2B1.1(a)(2), Defendant's base offense level is 6;
- (b) In accordance with USSG § 2B1.1(b)(1)(D), Defendant's offense level is increased by 6 because the loss is more than \$40,000 but less than \$95,000. Defendant agrees that due to the offense charged in Count Nine, he is responsible for losses to the Social Security and Medicare program totaling approximately \$69,768.

This application of the guidelines results in an Offense Level of 12 for Group II.

Group III: Count Ten-26 U.S.C. § 7201

- (a) In accordance with USSG §§ 2T1.1(a)(1) and 2T4.1(G), Defendant's base offense level is 18 because the tax loss resulting from his offense is greater than \$250,000 but less than \$550,000. Defendant agrees that due to the offense charged in Count Ten, including relevant conduct, he is responsible for tax losses from 2014 through 2016 of approximately \$318,266.
- (b) In accordance with USSG § 2T1.1(b)(1), Defendant's offense level is increased by 2 levels because he failed to report the source of income exceeding \$10,000 in any year from criminal activity.

This application of the guidelines results in an Offense Level of 20 for Group III.

Pursuant to USSG 3D1.1(b), Count Eight of the Superseding Information charging a violation of 18 U.S.C. § 1028A does not group because the statute specifies that the two-year mandatory term of imprisonment must be imposed to run consecutively to the term of imprisonment imposed for the underlying felony. Therefore, pursuant to USSG §3D1.4(a)-(c), the Combined Offense Level for Groups I through III is 26, resulting from a one-level increase to the highest offense level of Group I.

The U.S. Attorney also will take the position that, pursuant to USSG § 3C1.1, Defendant's Combined Offense Level be increased by 2 levels because Defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the offenses of conviction. Accordingly, the U.S. Attorney will take the position that Defendant's Combined Offense Level is 28.

If Defendant contends that there is a basis for a sentence outside the otherwise applicable Guidelines sentencing range based on Defendant's medical, mental, and/or emotional condition, or otherwise intends to rely on any such condition at sentencing, Defendant will, forthwith upon request, execute all releases and other documentation necessary to permit the U.S. Attorney and his experts (including Bureau of Prisons medical personnel) to obtain access to Defendant's medical, psychiatric, and psychotherapeutic records and will also provide to the U.S. Attorney forthwith copies of any such records already in Defendant's possession. In addition, Defendant will authorize Defendant's care providers to discuss Defendant's condition with the U.S. Attorney and his agents (including Bureau of Prisons medical personnel), as well as experts retained by the U.S. Attorney. Defendant also agrees to submit to examinations and interviews with experts retained by and chosen by the U.S. Attorney (including Bureau of Prisons medical personnel).

The U.S. Attorney reserves the right to oppose any argument for a sentence outside the USSG under the factors set forth in 18 U.S.C. § 3553(a).

Based on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case, and information known to the U.S. Attorney at this time, the U.S. Attorney agrees to recommend that the Court reduce by three levels Defendant's adjusted offense level under USSG § 3E1.1.

The U.S. Attorney reserves the right not to recommend a reduction under USSG § 3E1.1 if, at any time between Defendant's execution of this Plea Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit Defendant's conduct in the offense(s) of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG § 1B1.3;
- (d) Fails to provide truthful information about Defendant's financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG § 1B1.3;
- (f) Engages in acts that form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG § 3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Plea Agreement;

or

- (j) Attempts to withdraw Defendant's guilty plea.

Defendant understands and acknowledges that Defendant may not withdraw his plea of guilty if, for any of the reasons listed above, the U.S. Attorney does not recommend that Defendant receive a reduction in offense level for acceptance of responsibility. Defendant also understands and acknowledges that, in addition to declining to recommend an acceptance-of-responsibility adjustment, the U.S. Attorney may seek an upward adjustment pursuant to USSG § 3C1.1 if Defendant obstructs justice after the date of this Plea Agreement.

Nothing in this Plea Agreement affects the U.S. Attorney's obligation to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

4. Sentence Recommendation

The U.S. Attorney agrees to recommend the following sentence before the Court:

- (a) incarceration for a term at the low end of the Guidelines sentencing range as calculated by the U.S. Attorney in Paragraph 3 if, at sentencing, the Court finds the obstruction enhancement applies, or to a term at the low end of the Guidelines sentencing range as agreed to by the parties in Paragraph 3 if, at sentencing, the Court finds the obstruction enhancement does not apply;
- (b) a fine within the Guidelines sentencing range as calculated by the parties in Paragraph 3, unless the Court finds that Defendant is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay a fine;
- (c) 36 months of supervised release;
- (d) a mandatory special assessment of \$1,000, which Defendant must pay to the Clerk of the Court on or before the date of sentencing (unless Defendant establishes to the Court's satisfaction that Defendant is unable to do so);
- (e) restitution of:
 - i) at least \$1,787,813 to the victims of the offenses charged in Counts One through Seven of the Superseding Information, including relevant conduct;
 - ii) \$69,768 to the Social Security Administration and to Medicare;
 - iii) \$318,266 to the IRS; and
- (f) forfeiture as set forth in Paragraph 9.

Defendant agrees to join in the recommendation as described in paragraph 4(c)-(f), but is free to recommend a sentence of imprisonment of no less than 24 months, which is the mandatory term for Defendant's conviction of aggravated identity theft, and no fine.

Defendant agrees to provide the U.S. Attorney expert reports, motions, memoranda of law and documentation of any kind on which Defendant intends to rely at sentencing not later than 21 days before sentencing. Any basis for sentencing as to which Defendant has not provided the U.S. Attorney all such items at least 21 days before sentencing shall be deemed waived.

As stated above, the parties agree jointly to recommend that the Court order restitution to the Internal Revenue Service ("IRS") in an amount not less than \$318,266.

The parties also agree jointly to recommend the following special condition of any term of supervised release or probation:

During the period of supervised release or probation, Defendant must, within six months of sentencing or release from custody, whichever is later:

- (a) cooperate with the Examination and Collection Divisions of the IRS;
- (b) provide to the Examination Division all financial information necessary to determine Defendant's prior tax liabilities;
- (c) provide to the Collection Division all financial information necessary to determine Defendant's ability to pay;
- (d) file accurate and complete tax returns for those years for which returns were not filed or for which inaccurate returns were filed; and
- (e) make a good faith effort to pay all delinquent and additional taxes, interest, and penalties.

5. Protection of Assets for Payment of Restitution, Forfeiture and Fine

Defendant agrees not to transfer, or authorize the transfer of, any asset that has been restrained by Order of the Court in this case or any asset, whether or not restrained, that Defendant has agreed to forfeit pursuant to this Plea Agreement.

Defendant agrees not to transfer, or authorize the transfer of any other asset in which Defendant has an interest without prior express written consent of the U.S. Attorney, except for:

- (a) Assets subject to superior, secured interests of innocent third parties, in which Defendant has an equity interest of less than \$ 2,500;

- (b) Ordinary living expenses necessary to house, clothe, transport, and feed Defendant and those to whom Defendant owes a legal duty of support, so long as such assets do not exceed \$2,500 per month; and
- (c) Attorney's fees incurred in connection with this criminal case.

This prohibition shall be effective as of the date of Defendant's execution of this Plea Agreement and continue until the fine, forfeiture, and restitution ordered by the Court at sentencing and any tax liability incurred as a result of the conduct charged in the Superseding Information is satisfied in full.

If the U.S. Attorney requests, Defendant further agrees to complete truthfully and accurately the enclosed sworn financial statement and to deliver that statement to the U.S. Attorney within 30 days of signing this Plea Agreement.

6. Waiver of Rights to Appeal and to Bring Future Challenge

- (a) Defendant has conferred with his attorney and understands that he has the right to challenge both his conviction and his sentence (including any orders relating to supervised release, fines, forfeiture, and restitution) on direct appeal. Defendant also understands that, in some circumstances, Defendant may be able to argue in a future proceeding (collateral or otherwise), such as pursuant to a motion under 28 U.S.C. § 2255, 28 U.S.C. § 2241, or 18 U.S.C. § 3582(c), that Defendant's conviction should be set aside or Defendant's sentence (including any orders relating to supervised release, fines, forfeiture, and restitution) set aside or reduced.
- (b) Defendant waives any right to challenge Defendant's conviction on direct appeal or in a future proceeding (collateral or otherwise).
- (c) Defendant agrees not to file a direct appeal or challenge in a future proceeding (collateral or otherwise) any sentence of imprisonment of 70 months or less or any orders relating to supervised release, fines, forfeiture, and restitution. This provision is binding even if the Court's Guidelines analysis is different from that set forth in this Plea Agreement.
- (d) The U.S. Attorney likewise agrees that, regardless of the analysis employed by the Court, the U.S. Attorney will not appeal any imprisonment sentence of 81 months or more.
- (e) Regardless of the previous sub-paragraphs, Defendant reserves the right to claim that: (i) Defendant's lawyer rendered ineffective assistance of counsel under *Strickland v. Washington*; or (ii) the prosecutor in this case engaged in misconduct that entitles Defendant to relief from Defendant's conviction or sentence.

7. Other Post-Sentence Events

- (a) If, despite the waiver provision of sub-paragraph 6(c), Defendant appeals or challenges in a future proceeding (collateral or otherwise) Defendant's sentence, the U.S. Attorney reserves the right to argue the correctness of the sentence imposed by the Court (in addition to arguing that any appeal or future challenge (collateral or otherwise) is waived as a result of the waiver in sub-paragraph 6(c)).
- (b) If, despite the waiver provision of sub-paragraph 6(c), Defendant seeks re-sentencing, Defendant agrees not to seek to be re-sentenced with the benefit of any change to the Criminal History Category that the Court calculated at the time of Defendant's original sentencing, except to the extent that Defendant has been found actually factually innocent of a prior crime.
- (c) In the event of a re-sentencing following an appeal from or future challenge (collateral or otherwise) to Defendant's sentence, the U.S. Attorney reserves the right to seek a departure from and a sentence outside the USSG if, and to the extent, necessary to reinstate the sentence the U.S. Attorney advocated at Defendant's initial sentencing pursuant to this Plea Agreement.

8. Court Not Bound by Plea Agreement

The parties' sentencing recommendations and their respective calculations under the USSG are not binding upon the U.S. Probation Office or the Court. Within the mandatory minimum and maximum sentence Defendant faces under the applicable law, the sentence to be imposed is within the sole discretion of the Court. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(B). Defendant may not withdraw his plea of guilty regardless of what sentence is imposed, or because the U.S. Probation Office or the Court declines to follow the parties' USSG calculations or recommendations. Should the Court decline to follow the U.S. Attorney's USSG calculations or recommendations, the U.S. Attorney reserves the right to defend the Court's calculations and sentence in any direct appeal or future challenge (collateral or otherwise).

9. Forfeiture

Defendant understands that the Court will, upon acceptance of Defendant's guilty plea, enter an order of forfeiture as part of Defendant's sentence, and that the order of forfeiture may include assets directly traceable to Defendant's offenses, assets used to facilitate Defendant's offenses, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offenses.

The assets to be forfeited specifically include, without limitation, the following:

- (a) \$1,787,813 in United States currency, to be entered in the form of an Order of Forfeiture (Money Judgment).

Defendant admits that \$1,787,813 is subject to forfeiture on the grounds that it is equal to the amount of proceeds the Defendant derived from the offenses charged in Counts One through Seven of the Superseding Information.

Defendant acknowledges and agrees that the amount of the forfeiture money judgment represents proceeds the Defendant obtained (directly or indirectly) from the crimes to which Defendant is pleading guilty and that, due at least in part to the acts or omissions of Defendant, the proceeds or property have been transferred to, or deposited with, a third party, spent, cannot be located upon exercise of due diligence, placed beyond the jurisdiction of the Court, substantially diminished in value, or commingled with other property which cannot be divided without difficulty. Accordingly, Defendant agrees that the United States is entitled to forfeit as "substitute assets" any other assets of Defendant up to the value of the now missing directly forfeitable assets.

Defendant agrees to consent to the entry of an order of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2, and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands and agrees that forfeiture shall not satisfy or affect any fine, lien, penalty, restitution, cost of imprisonment, tax liability or any other debt owed to the United States.

Defendant further agrees to be deposed with respect to Defendant's assets at the request of the U.S. Attorney. Defendant agrees that the United States Department of Probation may share any financial information about the Defendant with the United States Attorney's Office.

Defendant also agrees to waive all constitutional, legal, and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement.

Defendant hereby waives and releases any claims Defendant may have to any vehicles, currency, or other personal property seized by the United States, or seized by any state or local law enforcement agency and turned over to the United States, during the investigation and prosecution of this case, and consents to the forfeiture of all such assets.

Without limiting the above, Defendant consents to the forfeiture of his interest in the following assets:

- a. All funds in the Defendant's retirement account, held by Hunton Andrews Kurth LLP Retirement Savings Plan A, and currently restrained by virtue of a Temporary Restraining Order entered by the Honorable Senior United States District Judge Rya W. Zobel, in Civil Action 17-11032.

Defendant agrees to assist fully in the forfeiture of his interest in the foregoing assets.

Defendant agrees to promptly take all steps necessary to pass clear title to his interest in the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that his interest in the assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. Defendant further agrees (a) not to assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding, and (b) to testify truthfully in any such proceeding, including by deposition.

10. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning Defendant's assets.

11. Civil Liability

By entering into this Plea Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, Defendant may have incurred or may incur as a result of Defendant's conduct and plea of guilty to the charges specified in Paragraph 1 of this Plea Agreement. Defendant agrees to cooperate with employees of the IRS, the Civil Division of the U.S. Attorney's Office, and law enforcement agents working with attorneys in the Civil Division of the U.S. Attorney's Office, in making an assessment of his civil liabilities. Defendant specifically authorizes release by the FBI, IRS or other investigative agency to the aforementioned agencies and their representatives of information for purposes of making that assessment. Defendant further agrees to assent to the filing and allowance of a motion under Rule 6(e) of the Federal Rules of Criminal Procedure, to permit the disclosure of matters occurring before the grand jury for this purpose.

12. Rejection of Plea by Court

Should Defendant's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on Defendant's motion, this Plea Agreement shall be null and void at the option of the U.S. Attorney.

13. Breach of Plea Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Plea Agreement, has violated any condition of Defendant's pretrial release, or has committed any crime following Defendant's execution of this Plea Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Plea Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, regardless whether he elects to be released from his commitments under this Plea Agreement. Further, the U.S. Attorney may pursue any and all charges that have been, or are to be, dismissed pursuant to this Plea Agreement. Defendant recognizes that his breach of any obligation under this Plea Agreement shall not give rise to

grounds for withdrawal of Defendant's guilty plea, but will give the U.S. Attorney the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements made by Defendant and any information, materials, documents or objects provided by Defendant to the government, without any limitation, regardless of any prior agreements or understandings, written or oral, to the contrary. In this regard, Defendant hereby waives any defense to any charges that Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

14. Who Is Bound By Plea Agreement

This Plea Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

15. Complete Plea Agreement

This Plea Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.


If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Plea Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Sandra S. Bower.

Very truly yours,

ANDREW E. LELLING
United States Attorney


By: 

STEPHEN FRANK
Chief, Economic Crimes Unit
JORDI DE LLANO
Deputy Chief, Economic Crimes Unit


SANDRA S. BOWER
Assistant U.S. Attorney


ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that (a) it accurately sets forth my plea agreement with the United States Attorney's Office for the District of Massachusetts; (b) there are no unwritten agreements between me and the United States Attorney's Office; and (c) no official of the United States has made any unwritten promises or representations to me, in connection with my change of plea. In addition, I have received no prior offers to resolve this case. I understand the crimes to which I have agreed to plead guilty, the mandatory minimum and maximum penalties for those offenses and the Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Plea Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty, and I believe this Plea Agreement is in my best interest.


SCOTT J. WOLAS
Defendant

Date: 6/12/18

I certify that SCOTT J. WOLAS has read this Plea Agreement and that we have discussed its meaning. I believe he understands the Plea Agreement and is entering into the Plea Agreement freely, voluntarily, and knowingly. I also certify that the U.S. Attorney has not extended any other offers regarding a change of plea in this case.


JANE PEACHY
Attorney for Defendant

Date: 6/12/18