



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

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BY EMAIL

William Lovett, Esq.
Robert Buchler, Esq.
Hogan Lovells US LLP
100 High Street – 20th Floor
Boston, MA 02110
william.lovett@hoganlovells.com
robert.buehler@hoganlovells.com

Re: *United States v. Richard Gaffey*, S8 18 Cr. 693 (RMB)

Dear Counsel:

This prosecution and the protection against prosecution, with respect to tax offenses, set forth below have been approved by the Tax Division, Department of Justice.

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") and the Money Laundering and Asset Recovery Section of the Department of Justice ("MLARS") will accept a guilty plea from Richard Gaffey, a/k/a Dick Gaffey to Counts One through Eight of the above-referenced Indictment (the "Indictment").

Count One of the Indictment charges the defendant with conspiracy to commit tax evasion and conspiracy to defraud the United States, in violation of 18 U.S.C § 371. Count One carries a maximum term of imprisonment of five years' imprisonment, a maximum term of three years' supervised release, a maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a \$100 mandatory special assessment; and the costs of prosecution.

Count Two of the Indictment charges the defendant with wire fraud, in violation of 18 U.S.C §§ 1343 and 2. Count Two carries a maximum term of imprisonment of 20 years; a maximum term of supervised release of three years; a maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$100 mandatory special assessment.

Count Three of the Indictment charges the defendant with money laundering conspiracy, in violation of 18 U.S.C. § 1956(h). Count Three carries a maximum term of imprisonment of 20 years, a maximum term of supervised release of three years, a maximum fine of \$500,000, or twice the value of the property involved in the transaction, and a \$100 mandatory special assessment.

Counts Four through Seven of the Indictment charge the defendant with willful failure to file Reports of Foreign Bank and Financial Accounts, FinCEN Reports 114 ("FBARs"), in violation of 31 U.S.C. §§ 5314 and 5322(a); 31 C.F.R. §§ 1010.350, 1010.306(c, d), and 1010.840(b); and 18 U.S.C. § 2. Counts Four through Seven each carry a maximum term of imprisonment of five years; a maximum term of supervised release of three years; a maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$100 mandatory special assessment.

Count Eight of the Indictment charges the defendant with aggravated identity theft, in violation of 18 U.S.C. §§ 1028A(a)(1), 1028A(b), and 2. Count Eight carries a mandatory consecutive term of 2 years' imprisonment, pursuant to 18 U.S.C. § 1028A(a)(1) and (c); a maximum term of supervised release of one year; a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$100 mandatory special assessment.

The total maximum term of imprisonment on Counts One through Seven is 65 years, with a mandatory consecutive two year term of imprisonment for Count Eight. In addition to the foregoing, the Court must order restitution as specified below.

In consideration of his plea to the above offenses, the defendant will not be further prosecuted criminally by this Office, MLARS, and, with respect to tax offenses, the Tax Division, Department of Justice, for any crimes relating to (1) his participation in a conspiracy to commit tax evasion and to defraud the United States, from at least in or about 2000 through in or about 2018, as charged in Count One; (2) a wire fraud scheme to conceal United States taxpayers' assets and investments, and the income generated by those assets and investments, from the IRS, from at least in or about 2000 through in or about 2018, as charged in Count Two; (3) his participation in a money laundering conspiracy with intent to promote the wire fraud scheme charged in Count Two, from at least in or about May 2007 through in or about 2018, as charged in Count Three; (4) his willful failure to file and aid and abet the failure to file FBARs for calendar years 2012 through 2015, as charged in Counts Four through Seven; (5) his use, without lawful authority, of a means of identification during and in relation to the wire fraud scheme, as charged in Count Two, from at least in or about 2007 through in or about 2018, as charged in Count Eight; it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. This Agreement does not provide any protection against prosecution except as set forth above. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde

Amendment,” Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegations with respect to Counts Two and Three of the Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(1), and Title 28, United States Code, Section 2461(c): (i) a sum of money equal to \$5,373,609 in United States currency, representing proceeds traceable to the commission of Count Two and the amount of property involved in Count Three (the “Money Judgment”); and (ii) all right, title and interest of the defendant in the following specific property: (1) any and all funds formerly on deposit in First Republic Bank accounts held in the name of EMJO Investments Limited; and (2) any and all funds formerly on deposit in Credit Suisse bank accounts in the name of Union Properties, Inc. (collectively the “Specific Property”). The defendant further agrees to forfeit to the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), all right, title and interest of the defendant in \$873,412 worth of assets held in the Elder Gaffey & Paine PC Profit Sharing Plan and Trust, administered by Paychex.com, in account number 008482-0024-00244092 (the “Substitute Assets”). The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Specific Property or the Substitute Assets and will not cause or assist anyone else in doing so. The defendant also agrees to take all necessary steps to pass clear title to the Specific Property and the Substitute Assets to the United States, including, but not limited to, the execution of all necessary documentation and the disclosure and repatriation of all Specific Property held overseas. It is further understood that any forfeiture of the defendant’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. The defendant consents to the entry of the Consent Order of Forfeiture annexed hereto as Exhibit A and agrees that the Consent Order of Forfeiture shall be final as to the defendant at the time it is ordered by the Court. The Office and MLARS agree to accept the forfeiture of the Substitute Assets as full satisfaction of the Money Judgment upon the entry of a Final Order of Forfeiture as to the full amount of the Substitute Assets.

The defendant further agrees to make restitution in the amount of \$3,459,315.60 in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664, including, but not limited to, 18 U.S.C. §§ 3663(a)(3) and 3663A(a)(3). The defendant will be given credit against this restitution amount for any payments made prior to sentencing, as verified by the Office. The obligation to make restitution shall be made a condition of probation, *see* 18 U.S.C. § 3563(b)(2), or of supervised release, *see* 18 U.S.C. § 3583(d), as the case may be. If the Court orders the defendant to pay restitution to the IRS, either directly as part of the sentence or as a condition of supervised release or probation, the IRS may use the restitution order as a basis for a civil assessment. *See* 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant’s timely payment of restitution according to that schedule will preclude the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

It is understood that at least two weeks prior to the date of sentencing, the defendant shall file with the IRS, and provide copies to the Office, accurate amended individual tax returns for the calendar years 2007 through 2018, or enter a Form 870 Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment signed by the

defendant. Notwithstanding the immediately preceding paragraph, the defendant will pay past taxes due and owing to the IRS for 2007 through 2018, including any applicable penalties, on such terms and conditions as will be agreed upon between the defendant and the IRS. The defendant will not contest the applicability of civil fraud penalties.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The applicable Guidelines manual is the manual effective November 1, 2018.
2. Pursuant to U.S.S.G. § 3D1.2(a)-(c), Counts One through Eight are grouped together in a single group (the “Group”).
3. Pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the Group is the offense level for the most serious of the counts comprising the Group.

Offense Level Calculation for Count One: Conspiracy to Evade Taxes and Defraud the United States – 18 U.S.C. § 371 (U.S.S.G. § 2T1.1)

- The Guideline section applicable to the offense charged in Count One of the Indictment is U.S.S.G. § 2T1.1.
- Pursuant to U.S.S.G. §§ 2T1.1(a)(1), 2T1.1(c)(1), and 2T4.1(I), because the tax loss is more than \$1,500,000 but less than \$3,500,000, the base offense level is 22.
- Pursuant to U.S.S.G. § 2T1.1(b)(1), because the defendant failed to report or correctly identify the source of income exceeding \$10,000 in any year from criminal activity, the offense level is increased by 2 levels.
- Pursuant to U.S.S.G. § 2T1.1(b)(2), because the offense involved sophisticated means, the offense level is increased by 2 levels.
- The base offense level for Count One is therefore 26.

Offense Level Calculation for Count Two: Wire Fraud – 18 U.S.C. § 1343 (U.S.S.G. § 2B1.1)

- The Guideline section applicable to the offense charged in Count Two of the Indictment is U.S.S.G. § 2B1.1.
- Pursuant to U.S.S.G. § 2B1.1(a)(2), the base offense level is 7.
- Pursuant to U.S.S.G. § 2B1.1(b)(1)(I), because the loss was more than \$1,500,000 but less than \$3,500,000, the offense level is increased by 16.

- Pursuant to U.S.S.G. § 2B1.1(b)(10), because a substantial part of the fraudulent scheme was committed from outside the United States, and the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, the offense level is increased by 2 levels.
- The base offense level for Count Two is therefore 25.

Offense Level Calculation for Count 3 - Money Laundering Conspiracy – 18 U.S.C. § 1956 (U.S.S.G. § 2S1.1)

- The Guideline section applicable to the offense charged in Count Two of the Indictment is U.S.S.G. § 2S1.1.
- Pursuant to U.S.S.G. § 2S1.1(a)(1), the base offense level is the offense level for the underlying offense of wire fraud, which is 25.
- Pursuant to U.S.S.G. § 2S1.1(b)(2)(B), because the offense is a violation of 18 U.S.C. § 1956, increase by 2.
- The base offense level for Count Three is therefore 27.

Offense Level Calculation for Counts Four through Seven: Willful Failure to File FBAR – 31 U.S.C. §§ 5314, 5322 (U.S.S.G. § 2S1.3)

- The Guideline section applicable to the offense charged in Counts Four through Seven of the Indictment is U.S.S.G. § 2S1.3.
- Pursuant to U.S.S.G. § 2S1.3(a)(2), the base offense level is 6 plus the number of offense levels from the table in § 2B1.1
- Pursuant to § 2B1.1(b)(1)(J), because the amount of funds in the accounts that the defendant failed to report was more than \$1,500,000 but less than \$3,500,000, the base offense level is increased by 16 levels.
- Pursuant to U.S.S.G. § 2S1.3(b)(1), because the defendant knew that the funds were proceeds of unlawful activity or were intended to promote unlawful activity, the offense level is increased by 2.
- Pursuant to U.S.S.G. § 2S1.3(b)(2), because the defendant was convicted of an offense under subchapter II of chapter 53 of Title 31, United States Code, and committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12 month period, the level is increased by 2.

- The base offense level for each of Counts Four through Seven is therefore 26.

Offense Level Calculation for Count Eight: Aggravated Identity Theft – 18 U.S.C. §§ 1028A(a)(1), 1028A(b), and 2 (U.S.S.G. § 2B1.6)

- The Guideline section applicable to the offense charged in Count Eight of the Indictment is U.S.S.G. § 2B1.6.
- Pursuant to U.S.S.G. § 2B1.6, the guideline sentence is the term of imprisonment required by statute.

4. Pursuant to U.S.S.G. § 3D1.3(a), the offense level applicable to the Group is the offense level for the most serious of the counts comprising the Group. Accordingly, the base offense level is 27, which is the offense level of Count Three.

5. Pursuant to U.S.S.G. § 3B1.3, because the defendant abused a position of public or private trust or used a special skill, in a manner that significantly facilitated the commission or concealment of the offenses, the offense level is increased by 2.

6. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a).

In accordance with the above, the applicable Guidelines offense level is 27.

B. Criminal History Category

Based upon the information now available to this Office and MLARS (including representations by the defense), the defendant has no applicable criminal history.

In accordance with the above, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's Guidelines range is 70 to 87 months' imprisonment, with a mandatory 24 months' imprisonment for Count Eight, resulting in a stipulated Guidelines Range of 94 to 111 months' imprisonment (the "Stipulated Guidelines Range"). Any term of imprisonment will run consecutively to the two year imprisonment required under 18 U.S.C. § 1028A. In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 27, the applicable fine range is \$25,000 to \$250,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any

way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreements that may have been entered into between this Office and MLARS and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office and MLARS cannot, and do not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section

2255 and/or Section 2241, of any sentence within or below the Stipulated Guidelines Range of 94 to 111 months' imprisonment and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any forfeiture ordered that is less than or equal to \$5,373,609, and the Government agrees not to appeal any forfeiture ordered that is greater than or equal to \$5,373,609. The defendant also agrees not to appeal any restitution ordered that is less than or equal to \$3,459,315.60, and the Government agrees not to appeal any restitution ordered that is greater than or equal to \$3,459,315.60. The defendant also agrees not to appeal any fine that is less than or equal to \$25,000, and the Government agrees not to appeal any fine that is greater than or equal to \$250,000. The defendant also agrees not to appeal any special assessment that is less than or equal to \$800. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, or impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his removal from the United States is presumptively mandatory and that, at a minimum, he is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, he recognizes that pleading guilty may have consequences with respect to the defendant's immigration status. For example, under federal law, an individual may be subject to denaturalization and removal if his naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that he has discussed the possible immigration consequences (including removal or denaturalization) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration or denaturalization consequences that may result from the guilty plea and conviction, even if those consequences include denaturalization and/or removal from the United States. The defendant understands that denaturalization and other immigration consequences are typically the subject of a separate proceeding, and the defendant understands that no one, including

his attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration or naturalization status. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from his guilty plea and conviction.

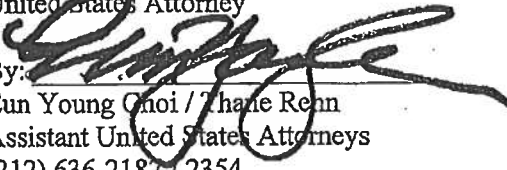
It is further agreed that should the convictions following the defendant's pleas of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office, MLARS, and, to the extent set forth above, the Tax Division, Department of Justice.

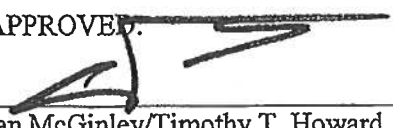
Apart from any written Proffer Agreements that may have been entered into between this Office, MLARS, and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office, MLARS, and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

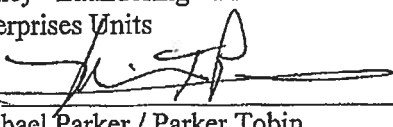
Very truly yours,

GEOFFREY S. BERMAN
United States Attorney

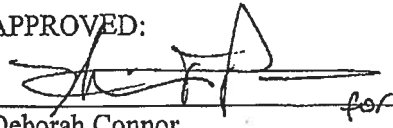
By: 
Eun Young Choi / Thane Renn
Assistant United States Attorneys
(212) 636-2187 / 2354

APPROVED:



Ian McGinley/Timothy T. Howard
Alexander Wilson/Andrew C. Adams
Chiefs, Complex Frauds & Cybercrime and
Money Laundering and Transnational Criminal
Enterprises Units

By: 
Michael Parker / Parker Tobin
Trial Attorneys
(202) 514-0421/(202) 305-3902

APPROVED:

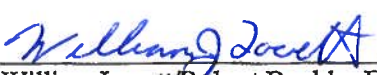
 for
Deborah Connor
Chief, MLARS, Criminal Division

AGREED AND CONSENTED TO:


Richard Gaffey

2/27/2020
DATE

APPROVED:


William Lovett/Robert Buehler Esq.
Attorney for Richard Gaffey

2/27/2020
DATE