



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278*

January 17, 2024

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One Manhattan West
New York, New York 10001

Re: *United States v. Broad Bay Ltd., S2 23 Cr. 370 (JGLC)*

Dear Counsel:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York (“this Office”) will accept a guilty plea from Broad Bay Ltd. (“the defendant”), a company owned and directed by Joseph Lewis, to Count One of the above-referenced superseding criminal information (the “Information”). A copy of the Information is attached hereto as Exhibit A.

Count One of the Information charges the defendant with securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2. Count One carries a maximum term of five years’ probation, pursuant to 18 U.S.C. §§ 3551(c)(1) and 3561(c)(1), a maximum fine, pursuant to 18 U.S.C. § 3571 and 15 U.S.C. § 78ff(a) of the greatest of \$25,000,000, 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 \$400 mandatory special assessment.

The defendant hereby acknowledges that it has accepted this Agreement and decided to plead guilty to Count One of the Information because it is in fact guilty. The defendant admits, agrees, and stipulates that the factual allegations set forth in the Information are true and correct, that it is responsible for the acts of its employees and agents described in the Information, and that the Information accurately reflects the defendant’s criminal conduct. The defendant agrees that, at the time of the guilty plea, it will admit that at least one owner, agent, or employee of the defendant engaged in securities fraud within the scope of his ownership, agency, or employment and for the benefit of the defendant, and that the defendant is responsible for the federal criminal violation charged in the Information as a result of the actions of its owners, agents, and employees as described in the Information. Additionally, the defendant will not dispute that there is a factual basis for the Guidelines calculation set forth below.

In consideration of the defendant’s plea to the above offense, the defendant will not be further prosecuted (and its current and former corporate parents and corporate affiliates will not

be prosecuted) criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for committing securities fraud from 2013 through 2018 through a scheme to purchase and/or hold shares of Mirati Therapeutics through offshore shell entities, and falsely state in reports filed pursuant to Section 13(d) of the Securities Exchange Act the number of shares the defendant and its affiliates beneficially owned of Mirati Therapeutics, as charged in Count One of the Information.

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 that Guidelines provisions in effect as of November 1, 2023, apply to this case. The defendant further stipulates that the Government’s Guidelines calculations, set forth below, shall be used to calculate the applicable Guidelines Range in connection with sentencing and further agrees not to contest such Guidelines calculations.

A. Offense Level and Base Fine

1. Pursuant to U.S.S.G. § 8C2.3, the applicable guidelines for the offense charged in Count One is U.S.S.G. § 2B1.1.
2. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is 7.
3. Pursuant to U.S.S.G. § 2B1.1(b)(1)(L), 22 levels are added because the loss or gain from the offense was more than \$25,000,000 but less than \$65,000,000.
4. Accordingly, the total offense level pursuant to U.S.S.G. § 2B1.1 is 29.
5. Pursuant to U.S.S.G. § 8C2.4(a)(1) and (d), the base fine is \$15,000,000.

B. Culpability Score and Fine Range

1. Pursuant to U.S.S.G. § 8C2.5(a), the culpability score starts with 5 points.
2. Pursuant to U.S.S.G. § 8C2.5(g)(3), 1 point is subtracted because the organization clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.
3. Accordingly, the culpability score is 4.
4. Pursuant to U.S.S.G. § 8C2.6, with a culpability score of 4, the fine multiplier is 0.8 to 1.6 times the base fine, to wit, \$12,000,000 to \$24,000,000.

C. Stipulated Total Financial Penalty

As a result of the conduct described in the Information, the parties agree pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that the defendant will pay the United States a total financial penalty of \$50 million (the “Stipulated Total Financial Penalty”), which

shall consist of a \$15,586,021 fine (the “Stipulated Fine Amount”) and the forfeiture of \$34,413,979 (the “Stipulated Forfeiture Amount”).

With respect to the fine, in consideration of all of the factors under U.S.S.G. § 8C2.8(a) and 18 U.S.C. § 3553(a), and after considering the individual facts and circumstances presented by this case, the parties agree that the defendant should pay a fine of the Stipulated Fine Amount, which imposes a 1.039 multiplier on the base fine amount determined by the Guidelines. The Office agrees to credit against the Stipulated Fine Amount the amount of any fine or forfeiture penalty imposed and paid in connection with the sentencing of Joseph Lewis in *United States v. Joseph Lewis*, S1 23 Cr. 370 (JGLC).

With respect to forfeiture, the defendant hereby admits the forfeiture allegation with respect to Count One of the Information and agrees to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), a sum of money equal to \$34,413,979 in United States currency, representing proceeds traceable to the commission of said offense (the “Money Judgment”). 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 it in addition to forfeiture. The defendant consents to the entry of the Consent Order of Forfeiture annexed hereto as Exhibit B 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 defendant agrees that the fine and forfeiture imposed in connection with this case shall both be treated as a penalty paid to the United States government for all purposes, including all tax purposes. The defendant agrees that neither it nor any other person or entity paying all or a portion of the imposed fine or forfeiture shall claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine or forfeiture paid pursuant to this Agreement. The defendant shall obtain the agreement of any person or entity paying all or a portion of the fine or forfeiture to this provision before accepting such payments to be made on its behalf.

The Stipulated Total Financial Penalty shall be paid within three months of the signing of this Agreement.

D. Sentencing Stipulation

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, this Office and the defendant agree that the Stipulated Total Financial Penalty represents an appropriate disposition of this case in light of the factors in Title 18, United States Code, Sections 3553(a) and 3572(a), and agree to recommend jointly that the Court impose a sentence consistent with the Stipulated Total Financial Penalty.

Pursuant to Rule 11(c)(1)(C), this Office and the defendant further agree that the Court should impose a term of probation of five years on the defendant (the “Stipulated Probation Term”). The parties further stipulate that the terms of probation shall be (i) the applicable mandatory conditions of probation described in 18 U.S.C. § 3563(a)(1) and U.S.S.G. § 8D1.3(a); (ii) a requirement that the defendant, Joseph Lewis, and any employee, officer, agent, company or entity acting at the direction of Lewis, or under the ownership or control of Lewis, resign and

otherwise relinquish their control over board of director seats and participation in board of director meetings of any corporation publicly traded in the United States (the “Board Seat Obligation”); (iii) a requirement that the defendant and any company or entity directly or indirectly owned or controlled by Joseph Lewis divest and cease any ownership interest in or control of Boxer Capital (the “Boxer Ownership Obligation”); and (iv) a requirement that the defendant provide continued cooperation to the Office as specified in this Agreement (the “Cooperation Obligation”).

The parties further stipulate, pursuant to 18 U.S.C. § 3564(c), that should the defendant dissolve as a corporate entity, the defendant may petition the Court for early termination of probation. In those circumstances, this Office will consent to such early termination, provided an alternative entity is appointed to complete the cooperation requirement set forth herein.

E. Obligations of Corporate Owner

The defendant is wholly owned and controlled by Joseph Lewis, who has separately been charged in the Indictment captioned *United States v. Joseph Lewis et al.*, S1 23 Cr. 370 (JGLC). As part of this Agreement, Mr. Lewis undertakes the following obligations during the period of the defendant’s probation:

1. The defendant will remain in existence, and Mr. Lewis’s ownership and control of the defendant will not be transferred or otherwise extinguished.
2. Entities under the ownership or control of Mr. Lewis will resign and otherwise relinquish their control over board of director seats and participation in board of director meetings of any corporation publicly traded in the United States. If an entity under the ownership or control of Mr. Lewis is required to nominate or vote for any potential director for a corporation publicly traded in the United States, that director must meet the independence standard of the applicable exchange.
 - a. This obligation will not extend to any current director of Mirati Therapeutics. However, in the event that Mirati’s announced transaction with Bristol Meyers is not completed, entities under the ownership or control of Mr. Lewis will resign and otherwise relinquish their control over board of director seats and participation in board of director meetings of Mirati Therapeutics.
 - b. This obligation will not prevent James Avery from continuing to serve as a director of Inseego, provided that if Mr. Avery continues to serve as a director, the following additional obligations will be imposed on Messrs. Lewis and Avery: (i) Messrs. Lewis and Avery shall not have any discussions relating to Inseego while Mr. Avery is a director except in the presence of counsel; and (ii) Mr. Avery will represent in writing to the Office that he will not have any discussions relating to Inseego with Mr. Lewis except in the presence of counsel.

3. Entities under the ownership or control of Mr. Lewis will divest and cease any ownership interest in or control of Boxer Capital, as provided for in the Boxer Ownership Obligation, by the end of the period of the defendant's probation.
4. Entities under the ownership or control of Mr. Lewis will provide continuing cooperation with the Office as provided in the Cooperation Obligation in this Agreement.
5. In the event Mr. Lewis dies during the period of the defendant's probation, the Board Seat Obligation and the Boxer Ownership Obligation will terminate upon his death. However, Mr. Lewis will take steps to ensure that if he passes away the entities presently under his ownership or control will continue to honor the Cooperation Obligation until the end the period of probation.

F. Judicial Acceptance and Sentencing

Pursuant to Rule 11(c)(1)(C), this Agreement, if accepted by the Court, requires the Court to impose the Stipulated Total Financial Penalty described herein, as well as a five-year term of probation on the defendant. In the event that the Court rejects this Agreement, the defendant shall be afforded the right, pursuant to Rule 11(c)(5)(B), to withdraw its plea of guilty. The parties agree that should the defendant withdraw a plea of guilty pursuant to Rule 11(c)(5)(B), this Agreement becomes null and void in all respects.

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. § 8C2.5(g)(3), regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through its 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. § 8C2.5(e), 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 and prior to sentencing in this case. To the extent the Court determines that the defendant has failed to accept responsibility or obstructed justice, as described above, the Government is permitted to seek any fine up to the statutory maximum. In the event the Court determines that failure to accept responsibility or obstruction of justice warrants a fine above the Stipulated Fine Amount of \$15,586,021, the defendant shall be afforded the right to withdraw its plea of guilty.

The defendant specifically agrees that it will not seek to dissolve itself prior to the time that its conviction in this matter becomes final.

By entering this plea of guilty, the defendant waives any and all right to withdraw its plea or to attack its 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.

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 fine less than or equal to \$15,586,021 and (ii) the Government will not appeal any fine that is greater than or equal to \$15,586,021. The defendant also agrees not to appeal or bring a collateral challenge of any forfeiture amount that is less than or equal to \$34,413,979, and the Government agrees not to appeal or bring a collateral challenge of any forfeiture amount that is greater than or equal to \$34,413,979. These provisions are 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 these provisions will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulations. The defendant further agrees not to appeal any term of probation that is less than or equal to the statutory maximum. 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 shall cooperate fully with this Office in any and all matters relating to the conduct described in this Agreement, the Information, and *United States v. Joseph Lewis et al.*, S1 23 Cr. 370 (JGLC) until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the term of probation. At the request of the Office, the defendant shall also cooperate fully with other United States law enforcement and regulatory authorities and agencies in any and all matters relating to the conduct described in this Agreement, the Information, and *United States v. Joseph Lewis et al.*, S1 23 Cr. 370 (JGLC). The defendant's cooperation pursuant to this Paragraph is subject to applicable laws and regulations, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, the defendant must provide to the Office a log of any information or cooperation that is not provided in response to the Office's requests based on an assertion of law, regulation, or privilege, and the defendant bears the burden of establishing the validity of any such assertion.

During the term of probation, should the defendant learn of any evidence or any allegation(s) of conduct that may constitute a violation of the securities laws that involve the employees or agents of the defendant, the defendant shall promptly report such evidence or allegation to the Office, and in no event more than thirty (30) days learning of such evidence or allegation.

It is further agreed that should the conviction following the defendant's plea 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 may be commenced or reinstated against the defendant or any of its corporate parents and corporate affiliates, 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.

This Agreement does not provide any protection against prosecution or other enforcement action against the defendant, any owner, shareholder, or employee of the defendant, or any other person or entity except as set forth above. In particular, this Agreement provides no immunity from prosecution to any individual and shall not restrict the ability of the Office to charge any individual for any criminal offense and seek the maximum term of imprisonment applicable to any such violation of criminal law.

Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 limit the admissibility of statements made in the course of plea proceedings or plea discussions in both civil and criminal proceedings, if the guilty plea is later withdrawn. The defendant expressly warrants that it has discussed these rules with its counsel and understands them. Solely to the extent set forth below, the defendant voluntarily waives and gives up the rights enumerated in Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. The defendant agrees that, effective as of the date the defendant signs this Agreement, it will not dispute the facts set forth in the Information, and the defendant's admission of those facts shall be admissible against the defendant in any criminal case involving the Office and the defendant, as: (a) substantive evidence offered by the government in its case-in-chief and rebuttal case; (b) impeachment evidence offered by the government on cross-examination; and (c) evidence at any sentencing hearing or other hearing. In addition, the defendant also agrees not to assert any claim under the Federal Rules of Evidence (including Rule 410 of the Federal Rules of Evidence), the Federal Rules of Criminal Procedure (including Rule 11 of the Federal Rules of Criminal Procedure), or the Sentencing Guidelines (including USSG § 1B1.1(a)) that the factual admissions should be suppressed or is otherwise inadmissible as evidence (in any form). Specifically, the defendant understands and agrees that any statements that it makes in the course of its guilty plea or in connection with this Agreement are admissible against it for any purpose in any U.S. federal criminal proceeding if, even though the Office has fulfilled all of its obligations under this Agreement and the Court has imposed the agreed-upon sentence, the defendant nevertheless withdraws its guilty plea.

The defendant agrees that this Agreement will be executed by an authorized corporate representative. The defendant further agrees that a resolution duly adopted by the defendant's managing member, parent, trustee, and/or owner authorizes the defendant to enter into this Agreement and to take all necessary steps to effectuate this Agreement, and that the signatures on this Agreement by the defendant and its counsel are authorized by the defendant's managing member, parent, trustee, and/or owner on behalf of the defendant. The defendant agrees that it has the full legal right, power, and authority to enter into and perform all of its obligations under this Agreement.

The defendant further agrees that it shall not authorize or approve, through its attorneys, partners, agents, or employees, any statement, in litigation or otherwise, through the Stipulated Probation Term (i) contradicting the guilt of the defendant, (ii) contradicting the plea allocation of the defendant, or (iii) contradicting that there is a sufficient factual basis to establish the Guidelines calculations set forth in this Agreement. Consistent with this provision, the defendant may raise defenses, including affirmative defenses, and/or assert affirmative claims in matters other than this

criminal action, so long as doing so is consistent with the provisions above. Any such authorized or approved contradictory statement by the defendant, its present or future attorneys, partners, agents, or employees shall constitute a material breach of this Agreement and thereby will relieve the Office of any continuing obligations under this Agreement.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office. Nevertheless, the Office will bring this Agreement and the nature of the conduct, the nature and quality of the cooperation of the defendant, its direct or indirect affiliates, parent companies, and subsidiaries, to the attention of other law enforcement and regulatory authorities.


Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office 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.

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This Agreement may be executed in one or more counterparts, including by scanning, faxing, photocopying, or similarly reproducing a copy of an original document containing an original handwritten signature of the executing party, each of which shall be considered effective as an original signature.

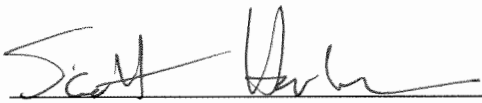
Sincerely,

DAMIAN WILLIAMS
United States Attorney

By: 


Nicolas Roos
Jason Richman
Assistant United States Attorneys

APPROVED:

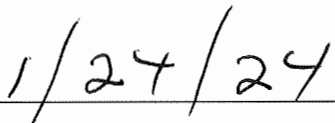


Scott Hartman, Chief
Matthew Podolsky, Chief
Securities and Commodities
Fraud Task Force

AGREED AND CONSENTED TO:

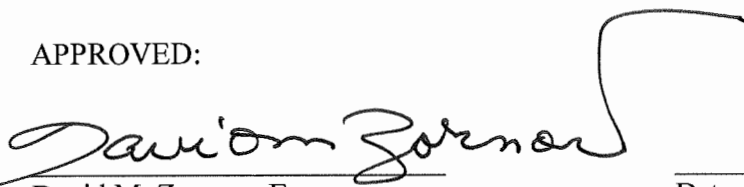


Broad Bay Ltd.
by Joseph Lewis (as corporate owner)

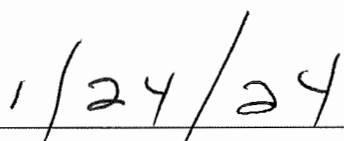


Date

APPROVED:



David M. Zornow, Esq.
Christopher J. Gunther, Esq.
Steven R. Glaser, Esq.
Ryan D. Junck, Esq.
Attorney for Broad Bay Ltd.



Date