



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

David M. Zornow
Christopher J. Gunther
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Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001

Re: *United States v. Joseph Lewis, S1 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 defendant Joseph Lewis to Counts One, Seven, and Ten of the above-referenced Superseding Indictment. Count One charges the defendant with conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371, Title 15, United States Code, Section 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, and carries a maximum term of imprisonment of five years; a maximum term of supervised release of three years; 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. Counts Seven and Ten each charge the defendant with securities fraud, in violation of Title 15, United States Code, Section 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2, and each carry a maximum term of imprisonment of 20 years; a maximum term of supervised release of three years; a maximum fine, pursuant to Title 15, United States Code, Section 78ff and Title 18, United States Code, Section 3571, of the greatest of \$5 million, 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 mandatory \$100 special assessment.

The total maximum sentence of incarceration on Counts One, Seven and Ten of the Superseding Indictment is 45 years’ imprisonment.

In addition, by accepting the terms of this agreement, the defendant agrees and stipulates that the conduct set forth in Counts Two through Six, Eight, Nine, and Eleven through Eighteen of the Superseding Indictment constitutes relevant conduct to the offense of conviction pursuant to U.S.S.G. § 1B1.3.

As part of this Agreement, the defendant further agrees to enter into a plea agreement between this Office and Broad Bay Ltd., which is owned and directed by the defendant, in the case *United States v. Broad Bay Ltd.*, S2 23 Cr. 370 (JGLC). As part of this Agreement, the defendant agrees to execute and effectuate the terms set forth in that plea agreement. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement and the agreement concerning Broad Bay Ltd., and none will be entered into unless in writing and signed by all parties.

In consideration of the defendant's plea to the above offenses and related admissions, the defendant will not be further 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 (1) providing material non-public information to Patrick O'Connor, Bryan "Marty" Waugh, the "girlfriend," the defendant's "senior executive assistant," and the defendant's "personal assistant," as defined in the Superseding Indictment, with the intent that they trade based on it, and/or causing them to trade on the basis of such information, in the securities of Australian Agricultural Company, Solid Biosciences, Mirati Therapeutics, and BCTG, as charged in Counts One through Eighteen of the Superseding Indictment, and (2) beneficially owning shares of Mirati Therapeutics in entities known as Newton Trust and Jasara Investments, and making false statements in reports filed pursuant to Section 13(d) of the Securities Exchange Act relating to the number of shares that the defendant beneficially owned of Mirati Therapeutics, as charged in Count Nineteen of the Superseding Indictment; 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. The defendant agrees that with respect to any and all dismissed charges the defendant 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.

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 Guidelines Manual in effect as of November 1, 2023 applies to this offense conduct.
2. The applicable guideline to the offenses charged in Counts One, Seven, and Ten is U.S.S.G. § 2B1.4.
3. Pursuant to U.S.S.G § 2B1.4(a), the base offense level is 8.
4. Pursuant to U.S.S.G §§ 2B1.4(b)(1) and 2B1.1(b)(1)(G), 12 levels are added because the gain resulting from the offense and related conduct was more than \$250,000 but less than \$550,000.

5. Pursuant to U.S.S.G. § 4C1.1(a), the offense level is decreased by two levels because the defendant meets all of the criteria in that section.
6. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through the defendant's allocation 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). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 15.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history points and is therefore in Criminal History Category I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 18 to 24 months' imprisonment (the "Stipulated Guidelines Range"). 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 15, pursuant to U.S.S.G. § 5E1.2(c)(3) & (c)(4), the applicable fine range is \$7,500 to \$5,000,000.

The parties agree that the defendant may seek a downward departure from the Stipulated Guidelines Range set forth above because of the defendant's age under U.S.S.G. § 5H1.1, and/or the defendant's physical condition under U.S.S.G. § 5H1.4, and the Government will not contest or otherwise oppose the application of either departure or any related adjustment to the Stipulated Guidelines Range.

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 Agreement(s) that may have been entered into between this Office 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 the defendant's 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 the defendant's 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 cannot, and does 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 the defendant's 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 that does not impose a term of 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 a 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 or bring a collateral challenge of any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal or bring a collateral challenge of any fine that is less than or equal to \$5,000,000, and the Government agrees not to appeal any fine that is greater than or equal to \$7,500. The defendant also agrees not to appeal or bring a collateral challenge to any special assessment that is less than or equal to \$300. 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 the defendant has accepted this Agreement and decided to plead guilty because the defendant is in fact guilty.

By entering this plea of guilty, the defendant waives any and all right to withdraw the defendant's plea or to attack the defendant's conviction or sentence, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material (other than information establishing the factual innocence of the defendant), including *Jencks* Act material, material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and 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 the defendant is not a citizen of the United States, the defendant's guilty plea and conviction make it very likely that the defendant's removal from the United States is presumptively mandatory and that, at a minimum, the defendant is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, the defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status. Under federal law, an individual may be subject to denaturalization and removal if the defendant's naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that the defendant has discussed the possible immigration consequences (including removal or denaturalization) of the defendant's guilty plea and conviction with defense counsel. The defendant affirms that the defendant 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 the defendant's 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 the defendant's 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 the defendant's 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 the defendant's 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

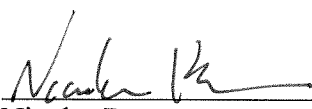
limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

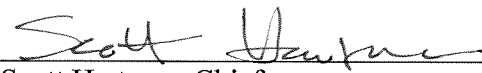
Apart from any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant.

Sincerely,

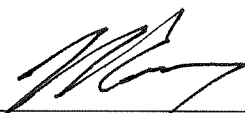
DAMIAN WILLIAMS
United States Attorney

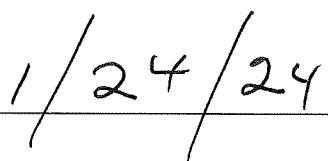
By: 
Nicolas Roos
Jason Richman
Assistant United States Attorneys

APPROVED:



Scott Hartman, Chief
Matthew Podolsky, Chief
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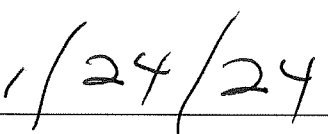
AGREED AND CONSENTED TO:


Joseph Lewis


Date

APPROVED:


David M. Zornow, Esq.
Christopher J. Gunther, Esq.
Steven R. Glaser, Esq.
Ryan D. Junck, Esq.
Attorneys for Joseph Lewis


Date