



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*

July 24, 2014

BY HAND

Benjamin Brafman, Esq.
Joshua Kirshner, Esq.
Brafman & Associates, P.C.
767 Third Avenue, 26th Floor
New York, New York 10017

**Re: United States v. Marvin Jemal,
14 Cr. 117 (VEC)**

Dear Messrs. Brafman and Kirshner:

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 Marvin Jemal ("the defendant") to Count Two of the above-referenced Indictment. Count Two charges the defendant with bank fraud, in violation of Title 18, United States Code, Sections 1344 and 2, and carries a maximum term of imprisonment of 30 years, a maximum term of supervised release of 5 years, a maximum fine, pursuant to Title 18, United States Code, Sections 1344 and 3571 of the greatest of \$1,000,000, 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 \$100 mandatory special assessment. In addition to the foregoing, the Court must order restitution as specified below.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for his fraud upon, and false statements to, the Israel Discount Bank of New York from in or about 2007, up to and including in or about October 2009 (as described in Counts One, Two, and Three of the above-referenced Indictment), and his money laundering activity from in or about May 2007, up to and including in or about February 2012 (as described in Count Four of the above-referenced 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 Count(s) against the defendant. 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 allegation with respect to Count Two of the Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, a sum of money equal to \$2,729,422.71 in United States currency, representing the amount of proceeds obtained as a result of the offense charged in Count Two of the above-referenced Indictment (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 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 defendant further agrees to make restitution in the amount of \$2,729,422.71 to the Israel Discount Bank of New York in accordance with Title 18, United States Code, Sections 3663, 3663A, and 3664, and that the obligation to make such restitution shall be made a condition of probation, *see* 18 USC §3563(b)(2), or of supervised release, *see* 18 USC §3583(d), as the case may be. The restitution amount shall be paid according to a plan established by the Court. The parties agree, however, that the existence of a payment plan set by the Court will not bar the Governmental collection efforts against any of the defendant’s available assets.

This Office will recommend to the Attorney General that the forfeited funds be remitted or restored to eligible victims of the offense, pursuant to 18 U.S.C. § 981(e), 21 U.S.C. § 853(i), 28 C.F.R. Pt. 9, and other applicable law, it being understood that this Office has authority only to recommend such relief and that the final decision of whether to grant relief rests with the Department of Justice, which will make its decision in accordance with applicable 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 in effect as of November 1, 2013, apply in this case.
2. Section 2B1.1 of the Guidelines applies to Count Two of the Indictment. 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)(I), a 16-level increase is warranted because the loss amount exceeded \$1,000,000, but was not more than \$2,500,000.
4. Pursuant to U.S.S.G. § 2B1.1(b)(16)(A), a 2-level increase is warranted because the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense.

5. 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). 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 his 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 22.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no 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 stipulated Guidelines range is 41 to 51 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 22, the applicable fine range is \$7,500 to \$1,000,000.

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 suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence outside of the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider 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 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 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 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; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 41 to 51 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 amount that is less than or equal to \$2,729,422.71, and the Government agrees not to appeal any forfeiture amount that is greater than or equal to \$2,729,422.71. Finally, the defendant agrees not to appeal any restitution amount that is less than or equal to \$2,729,422.71, and the Government agrees not to appeal any restitution amount that is greater than or equal to \$2,729,422.71.

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, 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.

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 (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 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.

Very truly yours,

PREET BHARARA
United States Attorney

By: Christopher D. Frey
Christopher D. Frey
Assistant United States Attorney
(212) 637-2270

APPROVED:

Richard Tarlowe
Richard Tarlowe
Chief, Complex Frauds Unit

AGREED AND CONSENTED TO:

Marvin Jemal
Marvin Jemal

8-7-14.
Date

APPROVED:

Benjamin Brafman, Esq.
Joshua Kirshner, Esq.
Attorneys for Marvin Jemal

8-7-14
Date

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
UNITED STATES OF AMERICA : CONSENT PRELIMINARY ORDER
OF FORFEITURE /
: MONEY JUDGMENT
- v. - :
MARVIN JEMAL, : 14 Cr. 117 (VEC)
:
Defendant. :
- - - - - x

WHEREAS, on or about February 19, 2014, MARVIN JEMAL (the "defendant"), was charged in a four-count Indictment, 14 Cr. 117 (VEC) (the "Indictment"), with conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 1349 (Count One); bank fraud, in violation of Title 18, United States Code, Sections 1344 and 2 (Count Two); false statements to influence bank action, in violation of Title 18, United States Code, Sections 1014 and 2 (Count Three); and money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2 (Count Four);

WHEREAS, the Indictment included a forfeiture allegation as to Counts One, Two, and Three of the Indictment seeking forfeiture to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, of all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One, Two, and Three

of the Indictment, including, but not limited to, a sum of United States currency, representing the amount of proceeds obtained as a result of the offenses alleged in Counts One, Two, and Three of the Indictment (the "Forfeiture Allegation");

WHEREAS, on or about August 7, 2014, the defendant pled guilty to Count Two of the Indictment, and admitted the Forfeiture Allegation with respect to Count Two of the Indictment, pursuant to a plea agreement with the Government, wherein the Defendant agreed to forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, a sum of money equal to \$2,729,422.71 in United States currency, representing the amount of proceeds obtained as a result of the offense charged in Count Two of the Indictment;

WHEREAS, the defendant consents to the entry of a money judgment in the amount of \$2,729,422.71 in United States currency, representing the amount of proceeds obtained as a result of the offense charged in Count Two of the Indictment (the "Money Judgment");

WHEREAS, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A), the defendant consents to this Consent Preliminary Order of Forfeiture as to the Money Judgment becoming final as to his interests prior to sentencing; and

IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by its attorney Preet Bharara, United States Attorney, Assistant United States Attorney Christopher D. Frey, of counsel, and the defendant, and his counsel, Benjamin Brafman, Esq. and Joshua Kirshner, Esq., that:

1. As a result of the offense charged in Count Two of the Indictment, to which the defendant pled guilty, a money judgment in the amount of \$2,729,422.71 in United States currency shall be entered against the defendant.

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, upon entry of this Consent Preliminary Order of Forfeiture, this Consent Preliminary Order of Forfeiture is final as to the defendant, MARVIN JEMAL, and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

3. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable, in this instance, to the "United States Marshals Service," and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007 and shall indicate the defendant's name and case number.

4. Upon execution of this Consent Preliminary Order of Forfeiture and pursuant to Title 21, United States Code,

Section 853, the United States Marshals Service shall be authorized to deposit the payments on the Money Judgment in the Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

5. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Consent Preliminary Order of Forfeiture, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

6. The Court shall retain jurisdiction to enforce this Consent Preliminary Order of Forfeiture, and to amend it as necessary, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure.

7. The Clerk of the Court shall forward three certified copies of this Consent Preliminary Order of Forfeiture to Assistant United States Attorney, Sharon Cohen Levin, Chief of Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007.

8. The signature pages of this Consent Preliminary Order of Forfeiture may be executed in one or more counterparts,

each of which will be deemed an original but all of which together will constitute one and the same instrument.

AGREED AND CONSENTED TO:

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: Christopher D. Frey
CHRISTOPHER D. FREY
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Tel.: (212) 637-2270

August 7, 2014
DATE

MARVIN JEMAL
Defendant

By: [Signature]
MARVIN JEMAL

8-7-14
DATE

By: [Signature]
BENJAMIN BRAFMAN, ESQ.
JOSHUA KIRSHNER, ESQ.
Attorneys for Defendant
Brafman & Associates, P.C.
767 Third Avenue, 26th Floor
New York, New York 10017
Tel.: (212) 750-7800

8-7-14
DATE

SO ORDERED:

HONORABLE VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE

DATE