FILED
JUN 20 2024
JUDGE JOHN J. THARP, JR.
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| UNITED STATES OF AMERICA | ) | |
| | ) | No. 23 CR 195 |
| | ) | |
| vs. | ) | Judge John J. Tharp, Jr. |
| | ) | |
| ADAM R. OLIVA | ) | |

# PLEA AGREEMENT

1. This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, MORRIS PASQUAL, and defendant ADAM R. OLIVA, and his attorney, DEVIN N. LUSTER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

## Charges in This Case

2. The indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts One to Five), and with committing an offense while on pretrial release, in violation of Title 18, United States Code, Section 3147(1) (Count Five).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

## Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count Five of the indictment.

## Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Five. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning no later than in or around September 2020, and continuing through at least in or around October 2022, defendant ADAM R. OLIVA, devised, intended to devise, and participated in a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises. As part of this scheme, defendant caused interstate wire communications, including an electronic transfer of funds on April 12, 2022, in furtherance of the scheme.

More specifically, defendant fraudulently induced and attempted to induce investors to provide him with money for the purpose of using the money to fund short-term loans made to third-party borrowers who were his purported clients. Defendant falsely represented to these investors that he was engaged in the business of making short-term loans to clients who were engaged in various businesses and that the investors could receive returns typically ranging from approximately 10% to 20% on their investments by providing him with money to fund these short-term loans. Defendant also falsely represented to investors that these clients were reliable borrowers who had previously repaid short-term loans and, in order to further deceive the investors, defendant created fictitious business names for these purported clients, provided investors with false promissory notes purportedly signed by the owners of these businesses to document the short-term loans, and fabricated bank statements to reflect past payments made by these clients.

Defendant made these false representations to investors knowing that there were no clients or short-term loans and, instead of using the funds as promised, he intended to use and did use the funds to pay for his personal purposes, including for gambling, restaurants, and retail purchases. In addition, defendant intended to use and used investor funds to make payments to other investors in a *Ponzi*-like manner in order to make it appear that their investments were generating returns and thereby lull the investors as well as to obtain new investments. For example, on or about August 20, 2021, defendant received $100,000 from Investor DW after falsely representing that the money would be used to fund a short-term loan to business identified as Kind Bakeries in Franklin Park even though defendant knew that no such business existed and there was no loan. Defendant then used Investor DW's funds, in part, to make a payment of $10,000 to Investor KG under the false pretense that the money represented a return on one of Investor KG's earlier investments to fund a short-term loan.

The fraudulently-obtained investments included $20,000 provided to defendant by Investor HA based upon defendant's false representations that the money would be used to fund a short-term loan to the owner of a tree care business in Illinois. Investor HA transferred the $20,000 investment to a PayPal account controlled by defendant. Defendant knew that there was no such business or short-term loan at the time he solicited and received the $20,000 investment from Investor HA. On April 12, 2022, defendant transferred the $20,000 provided by Investor HA, along with $10,000 fraudulently received from another investor, from PayPal to defendant's BMO Harris Bank account, where defendant used the money for his personal purposes.

As part of the scheme, defendant continued to mislead and lull investors through, at least, in or about October 2022. Defendant lulled investors by leading them to believe that they were receiving returns on their investments. Defendant did so by, among other means, using the proceeds of loans obtained from other individuals to make payments to the investors under the false pretense that the payments represented the returns on their investments. Defendant also sent fictitious messages purportedly from financial institutions reflecting that payments were being forwarded to the investors and by providing investors with checks drawn on closed bank accounts. For example, on or about September 11, 2022, for the purpose of lulling and falsely leading Investor CM to believe he was receiving a return on his investment, defendant provided Investor CM with a check for $120,000 drawn on an account at Citibank that had been closed for a number of years. Defendant provided this check to Investor CM knowing that the account had been closed and no such funds were available.

Defendant acknowledges that the transfer of funds on April 12, 2022 from PayPal to BMO Harris Bank involved an interstate wire communication. Defendant also acknowledges that, on March 29, 2022, he was released pending trial in Case No. 22 CR 178 (Northern District of Illinois) pursuant to an order of release issued under Title 18, United States Code, Chapter 207, and that he committed the offense set forth in Count Five of the indictment while on pretrial release.

7. Defendant also acknowledges that, for the purpose of computing his sentence under the Sentencing Guidelines, the government will maintain that the following conduct constitutes relevant conduct under Guideline § 1B1.3:

Beginning no later than in or about July 2020, and continuing through at least in or about October 2020, defendant devised, intended to devise, and participated in a scheme to defraud and to obtain money and property from Investor DS by means of materially false and fraudulent pretenses, representations, and promises.

Specifically, defendant fraudulently obtained $750,000 from Investor DS based upon false representations that Investor DS's money would be used to invest in a marijuana dispensary in Illinois when, in fact, defendant intended to use and used the money for his personal purposes. Investor DS depleted his retirement account to provide this investment to defendant and provided this investment to defendant through three intrabank transfers at BMO Harris Bank of $250,000 each on July 2, 2020, August 20, 2020, and October 19, 2020. The depletion of Investor DS's retirement account resulted in a substantial financial hardship.

Defendant reserves the right to dispute the nature of the conduct described above and whether it constitutes relevant conduct under Guideline § 1B1.3.

**Maximum Statutory Penalties**

8. Defendant understands that the charge to which he is pleading guilty carry the following statutory penalties:

a. Count Five carries a maximum sentence of 30 years' imprisonment, which consists of the statutory maximum of 20 years' imprisonment for the violation of 18 U.S.C. § 1343 with an additional 10 years' imprisonment for committing the offense while on release pursuant to 18 U.S.C. § 3147. Any sentence of imprisonment imposed under Section 3147 must be consecutive to any other term of imprisonment. Count Five also carries a maximum fine of $250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense set forth in Count Five in an amount determined by the Court.

c. Pursuant to Title 18, United States Code, Section 3013, defendant will be assessed $100 on the count to which he has pled guilty, in addition to any other penalty or restitution imposed.

## <u>Sentencing Guidelines Calculations</u>

9. Defendant understands that, in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

10. For purposes of calculating the Sentencing Guidelines, the parties agree and disagree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the 2023 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the offense set forth in Count Five of the indictment is seven, pursuant to U.S.S.G. § 2B1.1(a)(1).

ii. Pursuant to Guidelines § 2B1.1(b)(1)(I), the government maintains that the offense level should be increased by sixteen levels because the loss for the offense of conviction and relevant conduct was more than $1,500,000, but less than $3,500,000. Defendant reserves the right to dispute the amount of the loss for purposes of this enhancement.

iii. Pursuant to Guidelines § 2B1.1(b)(2)(A), the offense level should be increased by two levels because there were more than ten victims.

iv. Pursuant to Guidelines § 3C1.3, the offense level should be increased by three levels because the statutory enhancement set forth in 18 U.S.C. § 3147 is applicable.

v. If the Court determines that defendant has accepted responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vi. In accord with Guideline § 3E1.1(b), defendant has timely notified the government 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. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines that defendant has accepted responsibility and the offense level is sixteen or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

vii. The government maintains that the defendant does not meet the criteria set forth in Guideline § 4C1.1(a) for a two-level reduction in the offense level because the victim of the relevant conduct described above in paragraph 7 suffered a substantial financial hardship. Defendant reserves the right to maintain that he meets the criteria.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, and if the Court determines defendant has accepted responsibility, the government maintains that the anticipated offense level is twenty-five, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of fifty-seven to seventy-one months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

11. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by

such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

**Agreements Relating to Sentencing**

12. Each party is free to recommend whatever sentence it deems appropriate.

13. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

14. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make full restitution to the victims of the offense set forth in Count Five, which amount shall be determined by the Court and shall reflect credit for any funds repaid prior to sentencing.

15. Defendant also agrees to pay additional restitution to Investor DS, arising from the conduct described above in paragraph 7, totaling $750,000, pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664, if the Court determines that the conduct constitutes relevant conduct within the meaning of Guideline § 1B1.3.

16. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

17. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

18. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment, as well as the forfeiture allegation as to defendant.

## Acknowledgments and Waivers Regarding Plea of Guilty

### Nature of Agreement

19. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 22 CR 178.

20. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other

person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

**Waiver of Rights**

21. Defendant understands that, by pleading guilty, he surrenders certain rights, including the following:

a. **Trial rights**. Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

22. Defendant understands that, by pleading guilty, he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**<u>Presentence Investigation Report/Post-Sentence Supervision</u>**

23. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

24. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that

providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

25. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

## Other Terms

26. Defendant agrees to cooperate with the United States Attorney's Office in collecting any ordered fine and restitution or which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

27. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including one or more offenses to which defendant is pleading guilty. Indeed, because defendant is pleading guilty to an offense that is an "aggravated felony" as that term is defined in Title 8, United States Code, Section 1101(a)(43), removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States.

**Conclusion**

28. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

29. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or

may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

30. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

31. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

32. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 6/20/2024

MICHELLE PETERSEN Digitally signed by MICHELLE PETERSEN Date: 2024.06.18 14:40:50 -05'00' for MP

MORRIS PASQUAL
Acting United States Attorney

RICK D. YOUNG
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ADAM R. OLIVA
Defendant

DEVIN N. LUSTER
Attorney for Defendant