



U.S. Department of Justice
United States Attorney
District of New Jersey

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May 11, 2016

Michael P. Koribanics, Esq.
685 Van Houten Avenue
Clifton, NJ 07013

Re: Plea Agreement with TOMASZ CHMIELARZ

Dear Mr. Koribanics:

This letter sets forth the plea agreement between your client, TOMASZ CHMIELARZ, and the United States Attorney for the District of New Jersey ("this Office"). This plea offer will expire if an executed copy is not received by this Office by 5 p.m. on May 18, 2016.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from TOMASZ CHMIELARZ to Counts One and Three of the indictment, Cr. 15-626 (WJM) which charges defendant in Count One with conspiring to commit fraud and related activity with computers, contrary to Title 18, United States Code, Section 1030(a)(2)(C), 1030(c)(2)(B)(i), and 1030(c)(2)(B)(iii) in violation of Title 18, United States Code, Section 371, and in Count Three with conspiracy to commit fraud and related activity in connection with electronic mail contrary to Title 18, United States Code, Section 1037, and in violation of Title 18, United States Code, Section 371. If TOMASZ CHMIELARZ enters a guilty plea and is sentenced on these charges, this Office will not initiate any further criminal charges against TOMASZ CHMIELARZ for the activities described in the indictment Cr. 15-626 (WJM). However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, TOMASZ CHMIELARZ agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by TOMASZ CHMIELARZ may

be commenced against him, notwithstanding the expiration of the limitations period after TOMASZ CHMIELARZ signs the agreement.

Sentencing

With respect to Counts One and Three of the Indictment, each violation of 18 U.S.C. § 371 to which TOMASZ CHMIELARZ agrees to plead guilty carries a statutory maximum term of 5 years' imprisonment and a statutory maximum fine equal to the greatest of: (1) \$250,000, or (2) twice the gross amount of any pecuniary gain that any persons derived from the offense, or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon TOMASZ CHMIELARZ is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence TOMASZ CHMIELARZ ultimately will receive.

Further, in addition to imposing any other penalty on TOMASZ CHMIELARZ, the sentencing judge: (1) pursuant to 18 U.S.C. § 3013, will order TOMASZ CHMIELARZ to pay an assessment of \$100 per count, which assessment must be paid by the date of sentencing; (2) pursuant to 18 U.S.C. § 3663 *et seq.*, must order TOMASZ CHMIELARZ to pay restitution; (3) pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, must order forfeiture; and (4) pursuant to 18 U.S.C. § 3583, may require TOMASZ CHMIELARZ to serve a term of supervised release of not more than three years on Count One and on Count Three, which terms of supervised release will begin at the expiration of any term of imprisonment imposed. Should TOMASZ CHMIELARZ be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, TOMASZ CHMIELARZ may be sentenced to not more than two years' imprisonment on Count One and Count Three, in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be

imposed on TOMASZ CHMIELARZ by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of TOMASZ CHMIELARZ's activities and relevant conduct with respect to this case.

Stipulations

This Office and TOMASZ CHMIELARZ agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or TOMASZ CHMIELARZ from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and TOMASZ CHMIELARZ waive certain rights to file an appeal, collateral attack, writ, or motion after resentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

As part of his acceptance of responsibility, defendant TOMASZ CHMIELARZ agrees to forfeit to the United States, pursuant to 18 U.S.C. §§ 982(a)(2), 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, constituting or derived from proceeds obtained directly or indirectly as a result of the commission of the offenses charged in Counts One and Three

of the Indictment, including but not limited to a criminal forfeiture money judgment representing the amount of proceeds obtained as a result of such offenses (the "Money Judgment"). In the event the Office and defendant TOMASZ CHMIELARZ fail to reach an agreement on the amount of the Money Judgment prior to sentencing, the amount of the Money Judgment will be determined by the Court prior to or at the time of sentencing, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

All payments on the Money Judgment shall be made by certified or bank check, with the criminal docket number noted on the face of the check, payable to the United States Marshals Service, and delivered by mail to the United States Attorney's Office, District of New Jersey, Attn: Asset Forfeiture and Money Laundering Unit, 970 Broad Street, 7th Floor, Newark, New Jersey 07102, and shall indicate the defendant's name and case number on the face of the check.

TOMASZ CHMIELARZ agrees to consent to the entry of a Consent Judgment and Order of Forfeiture for the Money Judgment, and any further orders that may be necessary to enforce the Money Judgment, and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. TOMASZ CHMIELARZ understands that the imposition of the Money Judgment is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

It is further understood that any forfeiture of TOMASZ CHMIELARZ'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. TOMASZ CHMIELARZ hereby waives any and all claims that the forfeiture constitutes an excessive fine and agrees that the forfeiture does not violate the Eighth Amendment.

Immigration Consequences

TOMASZ CHMIELARZ understands that, if he is not a citizen of the United States, his guilty plea to the charged offenses will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. TOMASZ CHMIELARZ understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. TOMASZ CHMIELARZ wants and agrees to plead guilty to the charged offenses regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. TOMASZ CHMIELARZ un-

derstands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, TOMASZ CHMIELARZ waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against TOMASZ CHMIELARZ. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service and Immigration and Customs Enforcement), or any third party from initiating or prosecuting any civil or administrative proceeding against TOMASZ CHMIELARZ.

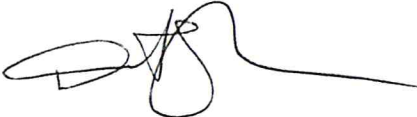
No provision of this agreement shall preclude TOMASZ CHMIELARZ from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that TOMASZ CHMIELARZ's guilty plea or sentence resulted from constitutionally ineffective assistance of counsel.

No Other Promises

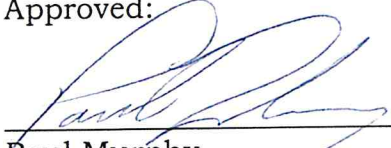
This agreement constitutes the plea agreement between TOMASZ CHMIELARZ and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney

By: 
DANIEL SHAPIRO
Assistant U.S. Attorneys

Approved:


Paul Murphy
Chief, Economic Crimes Unit

I have received this letter from my attorney, Michael Koribanics. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charges, sentencing, forfeiture, stipulations, waiver, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

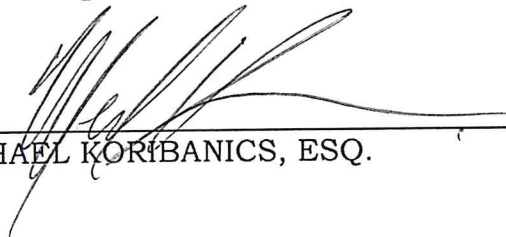
AGREED AND ACCEPTED:



TOMASZ CHMIELARZ

Date: 5/17/18

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charges, sentencing, forfeiture, stipulations, waiver, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.



MICHAEL KORIBANICS, ESQ.

Date: 5/17/18

Plea Agreement with TOMASZ CHMIELARZ

SCHEDULE A

1. This Office and TOMASZ CHMIELARZ recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and TOMASZ CHMIELARZ nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence TOMASZ CHMIELARZ within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and TOMASZ CHMIELARZ further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2015 applies in this case.

Count One

3. The applicable guideline is U.S.S.G. § 2X1.1, which provides that the base offense level for any conspiracy is the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. Because the substantive offense is fraud and related activity with computers, the applicable guideline is U.S.S.G. § 2B1.1.

4. Under U.S.S.G. § 2B1.1(a)(2), the base offense level is 6 because conviction of the offense charged in Count One of the Indictment does not carry a statutory maximum term of imprisonment of twenty years or more.

5. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(1)(H) applies because the relevant loss amount is more than \$550,000 but not more than \$1,500,000. This results in an increase of 14 levels.

6. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(2)(A)(ii) applies because the offense was committed through mass-marketing. This results in an increase of 2 levels.

7. The total offense level is 22.

Count Three

8. The applicable guideline is U.S.S.G. § 2X1.1, which provides that the base offense level for any conspiracy is the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. Because the substantive offense is fraud and related activity with electronic mail, the applicable guideline is U.S.S.G. § 2B1.1.

9. Under U.S.S.G. § 2B1.1(a)(2), the base offense level is 6 because conviction of the offense charged in Count Three of the Indictment does not carry a statutory maximum term of imprisonment of twenty years or more.

10. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(1)(H) applies because the relevant loss amount is more than \$550,000 but not more than \$1,500,000. This results in an increase of 14 levels.

11. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(2)(A)(ii) applies because the offense was committed through mass-marketing. This results in an increase of 2 levels.

12. The total offense level is 22.

Grouping

13. Counts One and Three are grouped pursuant to U.S.S.G. § 3D1.2(d). Pursuant to U.S.S.G. § 3D1.3, the offense level for the group is 22.

* * *

14. As of the date of this letter, TOMASZ CHMIELARZ has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if TOMASZ CHMIELARZ's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

15. As of the date of this letter, TOMASZ CHMIELARZ has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting

this Office to avoid preparing for trial and permitting this Office and the court to allocate their resources efficiently. At sentencing, this Office will move for a further 1-point reduction in TOMASZ CHMIELARZ offense level pursuant to U.S.S.G. § 3E1.1(b) if the following conditions are met: (a) TOMASZ CHMIELARZ enters a plea pursuant to this agreement, (b) this Office in its discretion determines that TOMASZ CHMIELARZ's acceptance of responsibility has continued through the date of sentencing and TOMASZ CHMIELARZ therefore qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and (c) TOMASZ CHMIELARZ's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater.

16. In accordance with the above, the parties agree that the total Guidelines offense level applicable to TOMASZ CHMIELARZ is 19 (the "agreed total Guidelines offense level").

17. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

18. TOMASZ CHMIELARZ knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level. This Office will not file any appeal, motion, or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

19. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph

and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.