UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:23-cr-

v.

HON.
United States District Judge

RYAN BOS,

Defendant.
_____/

PLEA AGREEMENT

This constitutes the plea agreement between Ryan Bos and the United States Attorney's Office for the Western District of Michigan. The terms of the agreement are as follows:

1. Plea to an Information. The defendant agrees to plead guilty to Count 1 of an Information. Count 1 of the Information charges the defendant with conspiracy to violate the Clean Air Act in violation of Title 18, United States Code, Section 371. The defendant waives his right to indictment by a grand jury.

2. The Defendant Understands the Crime. In order for the defendant to be guilty of violating Title 18, United States Code, Section 371, the following must be true:

a. First, two or more persons conspired, or agreed, to commit the crime of falsifying, tampering with, or rending inaccurate monitoring devices and methods, in violation of the Clean Air Act, Title 42, United States Code, Section 7413.

b. Second, the defendant knowingly and voluntarily joined the conspiracy.

c. Third, a member of the conspiracy did at least one of the overt acts described in the Information for the purpose of advancing or helping the conspiracy.

The defendant is pleading guilty because the defendant is guilty of the charge described above.

3. The Defendant Understands the Penalties. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371, is the following:

a. not more than five years in prison;

b. not more than three years of supervised release;

c. a fine of not more than $250,000, or twice the pecuniary gain from the offense, or twice the pecuniary loss to a person other than the defendant, whichever is greater; and

d. a $100 mandatory special assessment.

The defendant agrees to pay the special assessment at or before the time of sentencing unless the defendant affirmatively demonstrates to the Court that he lacks the ability to pay.

4. Supervised Release Defined. Supervised release is a period of time following imprisonment during which the defendant will be subject to various restrictions and requirements. The defendant understands that if he violates one or more of the conditions of any supervised release imposed, he may be returned to prison for all or part of the term of supervised release, which could result in the defendant serving a total term of imprisonment greater than the statutory maximum stated above.

5. Financial Disclosure Statement and Cooperation in Continuing Financial Investigation.

a. The defendant agrees to cooperate fully in the investigation of the amount of the fine; the identification of funds and assets in which he has any legal or equitable interest to be applied toward the fine; and the prompt payment of the fine. The defendant also agrees that

the full fine amount shall be considered due and payable immediately. The defendant understands that if the Court imposes a schedule of payments, that schedule is merely the defendant's minimum obligation and neither the only method, nor a limitation on the remedies, available to the United States to enforce the judgment.

b. The defendant's cooperation obligations include: (A) making payments to the Clerk for the upcoming fine as early as possible; (B) entering into an asset preservation agreement and/or payment plan with the government to preserve assets for payment of a fine and/or facilitate payment of a fine; (C) fully and truthfully completing the Department of Justice's Financial Statement of Debtor form, and any addenda to said form deemed necessary by the United States, within ten days of the change of plea hearing and providing it to both the U.S. Attorney's Office and the U.S. Probation Office; (D) providing any documentation within his possession or control requested by the government regarding his financial condition; (E) submitting to a financial deposition or interview (should the United States deem it necessary) prior to sentencing regarding the subject matter of said form (including making his financial advisor or accountant available for said financial deposition or interview); (F) fully and truthfully answering all questions regarding his past and present financial condition in such interview; and (G) providing a waiver allowing the U.S. Attorney's Office to access his credit report as well as a waiver for the past seven years of tax information held by the Internal Revenue Service.

c. The defendant agrees that the defendant will not sell, hide, waste, encumber, destroy, or otherwise devalue any such asset worth more than $10,000 before sentencing, without the prior approval of the United States, excluding attorneys' fees incurred in connection with this criminal case.

d. The defendant authorizes the U.S. Attorney's Office to inspect and copy all financial documents and information held by the U.S. Probation Office, and to share any information collected pursuant to this agreement with the U.S. Probation Office or the Court.

e. The defendant and the U.S. Attorney's Office agree that information provided by the defendant with respect to a criminal fine will be used to collect assets to satisfy the defendant's fine but it will not be used to otherwise enhance the defendant's sentence, in accordance with United States Sentencing Guidelines ("Guidelines") § 1B1.8. However, it is expressly understood that such information may be used by the government at sentencing to seek enhancement of the defendant's sentence if the government learns of information about the defendant's assets that is contradicted by the information provided by the defendant in accordance with the defendant's obligations under this paragraph.

f. The defendant agrees that failure to comply with any of the provisions in subparagraphs a through e above constitutes a material breach of the Plea Agreement.

6. Factual Basis of Guilt. The defendant and the U.S. Attorney's Office agree and stipulate to the following statement of facts which need not be proven at the time of the plea or sentencing, and which does not include all of the facts underlying the defendant's guilt:

a. Between at least July 2016 and at least November 2018, Accurate Truck Service, LLC, Griffin Transportation, Inc., Craig Scholten, Ryan Bos, Douglas Larsen, Robert Swainston, and Randy Clelland conspired with others, including but not limited to Diesel Freak LLC, Ryan Lalone, Wade Lalone, Jess Sisson, Dustin Rhine, Scott DeKock, and Glenn Hoezee, to violate the Clean Air Act. The conspirators violated the Clean Air Act by falsifying, tampering with, rendering inaccurate, deleting, modifying, and removing software and hardware

components from the emissions monitoring systems in heavy-duty diesel engines ("HDDEs") and vehicles that were required under the Clean Air Act.

b. Tampering with or removing the software or hardware of emissions components is sometimes referred to as "deletion," that is, "deleting" the emissions control components and monitoring devices from the vehicle. Reprogramming the on-board diagnostic ("OBD") system and/or engine control module ("ECM") as part of the emissions control deletion can be referred to as "tuning" the vehicle. These modifications may be undertaken for the purposes of increasing real or perceived performance and fuel efficiency of the vehicles, and of reducing or eliminating the cost and burden associated with maintaining the vehicles.

c. The defendant understands that: Diesel Freak LLC is a company headquartered in Gaylord, Michigan. Diesel Freak LLC conducted remote engine reprogramming, or tuning of OBDs, including deletions, in the Western District of Michigan and elsewhere, including for Accurate Truck Service, LLC, and Griffin Transportation, Inc. Ryan Lalone owns and operates Diesel Freak LLC. Wade Lalone, Jess Sisson, and Dustin Rhine were employed as programmers at Diesel Freak LLC.

d. Accurate Truck Service, LLC, headquartered in Grand Rapids, Michigan, is a mechanical shop that provided services, including deletions, for trucks with HDDEs and other vehicles. The company is owned by Craig Scholten, Ryan Bos, and Douglas Larsen. Larsen is primarily responsible for day-to-day operations of the company. Accurate Truck Service, LLC's service manager is Robert Swainston and its head mechanic during the relevant time period was Randy Clelland, a/k/a "Jeb." All of these defendants—Larsen, Scholten, Bos,

Swainston, and Clelland—were personally involved in certain decisions to delete emissions control components from vehicles carrying HDDEs as a part of the conspiracy.

e. Griffin Transportation, Inc., is a company that shares a premises with, and is associated with, Accurate Truck Service, LLC, and is owned by Craig Scholten and Ryan Bos. Bos is primarily responsible for day-to-day operations of the company. Griffin Transportation, Inc., is a shipping company that owned, leased, or operated vehicles containing HDDEs that it caused to be deleted. Accurate Truck Service, LLC, and Diesel Freak LLC deleted those vehicles.

f. From at least July 2016 to at least November 2018, Accurate Truck Service, LLC, deleted, or aided and abetted the deletion of, at least 83 vehicles. Diesel Freak LLC provided the engine reprogramming involved in the deletion of most of these vehicles.

g. From at least July 2016 to at least November 2018, Griffin Transportation, Inc., and its related companies, including Accurate Truck Service, LLC, owned, leased, or operated at least 12 deleted vehicles. Accurate Truck Service, LLC, and Diesel Freak LLC deleted these vehicles.

h. The deletions included a 2011 Freightliner, 2010 14.8-liter Detroit Diesel engine, VIN 1FUJGLDR8BSAZ2553, and a 2013 Kenworth, 2012 15-liter Cummins ISX engine, VIN 1XKAD49XXDJ355780.

i. The conspirators concealed from the government and others that they were engaged in the illegal removal of emissions control components. For example, Accurate Truck Service, LLC, would use code words on invoices, like "ECM wiring," to conceal the fact that the

work performed was a deletion. According to Scholten, he was not involved in inventing code words and did not personally create Accurate Truck Service, LLC, invoices.

7. The United States Attorney's Office's Agrees.

a. Acceptance of Responsibility. The U.S. Attorney's Office agrees not to oppose the defendant's request for a two-level reduction of his offense level for acceptance of responsibility under Section 3E1.1(a) of the Guidelines. However, the U.S. Attorney's Office reserves the right to object to the defendant's request if it subsequently learns of conduct by the defendant that is inconsistent with the criteria set forth in the Commentary to Section 3E1.1. Should the Court grant a two-level reduction as provided herein, the U.S. Attorney's Office will move the Court to grant an additional one-level reduction if the adjusted offense level is 16 or greater pursuant to Section 3E1.1(b).

b. Non-Prosecution Agreement. The U.S. Attorney's Office for the Western District of Michigan agrees not to bring additional criminal charges against the defendant in the Western District of Michigan arising out of the defendant's violations of the Clean Air Act between 2012 and 2022, provided that the conduct is disclosed to the government by the defendant or his attorney prior to the date of this agreement. This promise of non-prosecution shall not include crimes of violence, if any, or criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371).

8. The Sentencing Guidelines. The defendant understands that, although the Guidelines are not mandatory, the Court must consult the Guidelines and take them into account when sentencing the defendant. The defendant understands that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. The

defendant understands that the defendant and the defendant's attorney will have the opportunity to review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guidelines range and the sentence to be imposed. The defendant further understands that the Court shall make the final determination of the Guidelines range that applies in this case, and may impose a sentence within, above, or below the Guidelines range, subject to the statutory maximum penalties described elsewhere in this agreement. The defendant further understands that disagreement with the Guidelines range or sentence shall not constitute a basis for withdrawal of the plea.

9. There is No Agreement About the Final Sentencing Guidelines Range. The defendant and the U.S. Attorney's Office have no agreement as to the applicable Guidelines factors or the appropriate Guidelines range. Both parties reserve the right to seek any sentence within the statutory maximum, and to argue for any criminal history category and score, offense level, specific offense characteristics, adjustments, and departures.

10. Waiver of Constitutional Rights. By pleading guilty, the defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by the Court. As a result of the defendant's guilty plea, there will be no trial. At any trial, whether by jury or by the Court, the defendant would have had the following rights:

a. The right to the assistance of counsel, including, if the defendant could not afford an attorney, the right to have the Court appoint an attorney to represent the defendant.

b. The right to be presumed innocent and to have the burden of proof placed on the government to prove the defendant guilty beyond a reasonable doubt.

c. The right to confront and cross-examine witnesses against the defendant.

d. The right, if the defendant wished, to testify on the defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

e. The right not to be compelled to testify, and, if the defendant chose not to testify or present evidence, to have that choice not be used against the defendant.

f. By pleading guilty, the defendant also gives up any and all rights to pursue in this Court or on appeal any affirmative defenses, Fourth Amendment, or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

11. Waiver of Other Rights.

a. FOIA Requests. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

b. Hyde Waiver. The defendant acknowledges, by his voluntary admission of guilt, that the position of the U.S. Attorney's Office in this case is not vexatious, frivolous, or in bad faith, and the defendant hereby disclaims and waives any right to make any claim for attorneys' fees.

12. The Court is Not a Party to this Agreement. The defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the U.S. Attorney's Office or the parties regarding the sentence to be imposed. The defendant further understands that, even if the Court ignores such a

recommendation or imposes any sentence up to the maximum established by statute, the defendant cannot, for that reason, withdraw his guilty plea, and he will remain bound to fulfill all his obligations under this agreement. The defendant understands that no one—not the prosecutor, the defendant's attorney, or the Court—can make a binding prediction or promise regarding the sentence the defendant will receive, except that it will be within the statutory maximum.

13. This Agreement is Limited to the Parties. This agreement is limited to the U.S. Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement applies only to crimes committed by the defendant. This agreement does not apply to or preclude any past, present, or future forfeiture or civil actions.

14. Consequences of Breach. If the defendant breaches any provision of this agreement, whether before or after sentencing, the United States shall have the right to terminate this agreement, or deny any or all benefits to which the defendant would otherwise be entitled under the terms of this agreement. In the event that the United States elects to terminate this agreement, the agreement shall be considered null and void, and the parties shall return to the same position they were in prior to the execution of this agreement, as though no agreement ever existed. In such an event, the defendant shall remain liable for prosecution on all original charges, and the United States shall be free to bring such additional charges as the law and facts warrant. The defendant further agrees to waive and forever give up his right to raise any claim that such a prosecution is time-barred if the prosecution is brought within one (1) year of the breach that gives rise to the termination of this agreement.

15. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any additional agreements, understandings, or conditions be entered into unless in a writing signed by all parties or on the record in open court.

MARK A. TOTTEN
United States Attorney

4/24/23
Date

JUSTIN M. PRESANT
Assistant United States Attorney

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

4/19/23
Date

RYAN BOS
Defendant

I am Ryan Bos's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

04.19.23
Date

BRIAN PATRICK LENNON
Attorney for Defendant