



U.S. Department of Justice

United States Attorney
District of New Jersey

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SMW/PL AGR
2016R00101

November 14, 2016

Brian Reilly, Esq.
22 South Clinton Avenue, Station Plaza 4 Fourth Floor
Trenton, NJ 08609

Re: Plea Agreement with John Scholtz

Dear Mr. Reilly:

This letter sets forth the plea agreement between your client, John Scholtz, and the United States Attorney for the District of New Jersey ("this Office").

Charges

Conditioned on the understandings specified below, this Office will accept a guilty plea from John Scholtz to a two-count Information that charges John Scholtz with wire fraud (Count 1), in violation of 18 U.S.C. §§ 1343 and 2, and transacting in criminal proceeds (Count 2), in violation of 18 U.S.C. §§ 1957 and 2. If John Scholtz enters a guilty plea and is sentenced on these charges, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against John Scholtz for his operation of a fraudulent scheme through which he embezzled IPS client funds and for transacting in the criminal proceeds of such embezzlement from in or about 2012 through in or about January 2016. 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, John Scholtz 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 John Scholtz may be commenced against him, notwithstanding the expiration of the limitations period after John Scholtz signs the agreement.

Sentencing

The violation of 18 U.S.C. § 1343 to which John Scholtz agrees to plead guilty carries a statutory maximum prison sentence of 20 years 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. The violation of 18 U.S.C. § 1957 to which John Scholtz agrees to plead guilty carries a statutory maximum prison sentence of 10 years 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. The sentence on each count may run consecutively. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon John Scholtz 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 John Scholtz ultimately will receive.

Further, in addition to imposing any other penalty on John Scholtz, the sentencing judge: (1) will order John Scholtz to pay an assessment of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order John Scholtz to pay restitution pursuant to 18 U.S.C. § 3663A; (3) may order John Scholtz, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offenses; (4) must order forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 and 18 U.S.C. § 982(a)(1); and (5) pursuant to 18 U.S.C. § 3583, may require John Scholtz to serve a term of supervised release of not more than 3 years per count, which will begin at the expiration of any term of imprisonment imposed. Should John Scholtz be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, John Scholtz may be sentenced to not more than 2 years' imprisonment per count 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.

In addition, John Scholtz agrees to make full restitution for all losses resulting from the offenses of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying those offenses, to the victims of those offenses in the total amount of approximately \$9 million.

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 John Scholtz 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 John Scholtz's activities and relevant conduct with respect to this case.

Stipulations

This Office and John Scholtz 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 John Scholtz 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 this Office'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 John Scholtz waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

John Scholtz agrees that as part of his acceptance of responsibility and pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 and 18 U.S.C. § 982(a)(1), he will forfeit to the United States his interests, if any, in the following property (the "Forfeitable Property") or any net proceeds (after payment of all liens and judgments against such property) if such property is sold prior to sentencing:

- a) \$135,000 in proceeds received from the sale of a 54-foot Sea Ray boat, bearing Hull Identification Number (HIN) SER0557C999, sold on or about June 17, 2016;
- b) \$32,400 in net proceeds from the sale of a 33-foot Ocean Waves Blackhawk boat, bearing HIN JLU00001G708, sold on or about July 22, 2016;
- c) A 26-foot Monterey boat, bearing HIN RGF6MH602I314;
- d) A 46-foot Hatteras boat, bearing HIN HATAS3160774;
- e) A Cessna 340A airplane bearing Tail Number N315MG;
- f) An Aerostar 601P airplane bearing Tail Number N700MF;
- g) A Cirrus SR20 airplane bearing Tail Number N923TL;
- h) \$38,243 in proceeds received from the sale of a condominium located at 660 Island Way, Unit 804, Clearwater, FL;
- i) A residence located at 672 Harbor Island Way, Clearwater, FL;
- j) A residence located at 639 Albertson Road, Winslow, NJ;
- k) Property located at 635 and 637 Albertson Road, Winslow, NJ;
- l) Three CD accounts (ending in 6217, 6284, and 6131) at Iberia Bank held in the name of IPS, which contain a total of approximately \$13,323, plus any additional interest;
- m) Two accounts (ending in 9897 and 9491) at M&T Bank held in the name of IPS, which contain approximately \$424,687 and \$337,768, respectively, plus any additional interest; and
- n) Any proceeds received from the Chubb Insurance Company of New Jersey as a result of any claim(s) filed in or about February 2016 by IPS, minus the cost of reasonable fees charged by IPS's attorney.

In addition, John Scholtz will consent to the entry of a forfeiture money judgment in an amount equal to approximately \$9 million, the specific

amount to be determined by the Court, minus the value of the Forfeitable Property (the "Forfeiture Money Judgment"). John Scholtz acknowledges that the Forfeitable Property and the Forfeiture Money Judgment are subject to forfeiture as property, real or personal, that constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1343, which constitutes a specified unlawful activity within the meaning of 18 U.S.C. § 981(a)(1)(C), or a conspiracy to commit such offense; and property, real or personal, that was involved in an offense in violation of 18 U.S.C. § 1957, or that was traceable to such property.

Payment of the Forfeiture Money Judgment shall be made by certified or bank check payable to the United States Marshals Service and delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102, with the criminal docket number noted on the face of the check. If the Forfeiture Money Judgment is not paid on or before the date John Scholtz enters his plea of guilty pursuant to this agreement, John Scholtz consents to the forfeiture of any other property alleged to be subject to forfeiture in the Information, including substitute assets, in full or partial satisfaction of the money judgment, and shall remain responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full and will make payments toward it in accordance with the terms imposed by the sentencing judge as part of John Scholtz's sentence.

John Scholtz agrees to waive all interest in the Forfeitable Property in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. John Scholtz agrees to consent to the entry of orders of forfeiture for the Forfeitable Property and Forfeiture 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. John Scholtz understands that the forfeiture of the Forfeitable Property and Forfeiture 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. Furthermore, John Scholtz waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

John Scholtz represents that he has disclosed all of his assets to the United States on the Financial Disclosure Statement dated March 7, 2016. John Scholtz agrees that if this Office determines that John Scholtz has intentionally failed to disclose assets on that Financial Disclosure Statement, that failure constitutes a material breach of this agreement. In addition, John

Scholtz consents to the administrative, civil, and/or criminal forfeiture of his interests in any assets that he failed to disclose on the Financial Disclosure Statement. Should undisclosed assets that John Scholtz owns or in which he has an interest be discovered, John Scholtz knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets. John Scholtz further agrees to execute any documents necessary to effectuate the forfeiture of said assets.

Immigration Consequences

John Scholtz 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. John Scholtz understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. John Scholtz 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. John Scholtz understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, John Scholtz 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 John Scholtz. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service) or any third party from initiating or prosecuting any civil or administrative proceeding against John Scholtz.


No provision of this agreement shall preclude John Scholtz from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that John Scholtz received constitutionally ineffective assistance of counsel.

No Other Promises

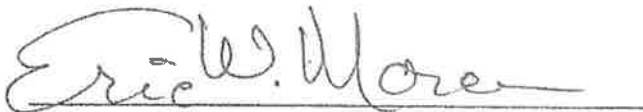
This agreement constitutes the plea agreement between John Scholtz and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney


By: SARAH WOLFE
Assistant U.S. Attorney


APPROVED:



ERIC MORAN
Attorney-in-Charge, Trenton

I have received this letter from my attorney, Brian Reilly, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charges, sentencing, stipulations, waiver, forfeiture, 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:



John Scholtz

Date: 12/19/2016

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



Brian Reilly, Esq.

Date: 12/21/16

Plea Agreement With John Scholtz

Schedule A

1. This Office and John Scholtz recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and John Scholtz nevertheless agree to the stipulations set forth herein.

2. The version of the United States Sentencing Guidelines effective November 1, 2016 applies in this case.

3. The applicable guideline for Count 1 is U.S.S.G. § 2B1.1. This guideline carries a Base Offense Level of 7.

a. The loss amount was more than \$3,500,000 but not more than \$9,500,000. The offense level is therefore increased by 18 levels. U.S.S.G. § 2B1.1(b)(1)(J).

b. The offense involved 10 or more victims. The offense level is therefore increased by 2 levels. U.S.S.G. § 2B1.1(b)(2)(A)(i).

c. Thus, the adjusted offense level for Count 1 is 27.

4. The applicable guideline for Count 2 is U.S.S.G. § 2S1.1. The Base Offense Level under this guideline is the offense level for the underlying offense from which the laundered funds were derived, which is 27. U.S.S.G. § 2S1.1(a)(1).

a. The defendant was convicted under 18 U.S.C. § 1957. The offense level is therefore increased by 1 level. U.S.S.G. § 2S1.1(b)(2)(A).

b. Thus, the adjusted offense level for Count 2 is 28.

5. Count 1 and Count 2 group, pursuant to U.S.S.G. §3D1.2. The offense level for the group is the highest offense level, which is 28. U.S.S.G. §3D1.3.

6. John Scholtz abused a position of private trust in a manner that significantly facilitated the commission of the offense. This results in an increase of 2 levels. U.S.S.G. § 3B1.3.

7. As of the date of this letter, John Scholtz has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offenses charged. Therefore, a downward adjustment of 2

levels for acceptance of responsibility is appropriate if John Scholtz's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

8. As of the date of this letter, John Scholtz 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 the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If John Scholtz enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in addition John Scholtz's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, John Scholtz will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

9. In accordance with the above, the parties agree that the total Guidelines offense level applicable to John Scholtz is 27 (the "agreed total Guidelines offense level").

10. The parties agree not to seek or argue for any upward or downward departure or adjustment not set forth herein. However, the parties further agree that either party may move for an upward or downward variance in accordance with the holding of United States v. Booker, 543 U.S. 220 (2005), and in so doing may argue that any sentence within the statutory range is reasonable pursuant to the provisions of 18 U.S.C. § 3553(a).

11. John Scholtz 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 of 27. 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 of 27. 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.

12. 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.