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U.S. Department of Justice OCT 11 2023

United States Attorney
District of New Jersey

AT 8:30 M
CLERK, U.S. DISTRICT COURT - DNJ

970 Broad Street, 7th floor
Newark, New Jersey 07102

973-645-2700

MCO/PL AGR

April 7, 2023

Lorraine Gauli-Rufo
LGR Law, LLC
06 Pompton Avenue, Ste 25
Cedar Grove, NJ 07009

Re: Plea Agreement with Arlen Encarnacion

23 CR 794(GC)

Dear Counsel:

This letter sets forth the plea agreement between your client, Arlen Encarnacion ("ENCARNACION"), and the United States Attorney for the District of New Jersey ("this Office"). This offer will expire on April 14, 2023, if it is not accepted in writing by that date. If ENCARNACION does not accept this plea agreement, his sentencing exposure could increase beyond what is discussed in this plea agreement as a result of this Office's investigation.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from ENCARNACION to a Two-Count Information, which charges ENCARNACION with conspiracy to commit wire fraud, contrary to 18 U.S.C. § 1343, in violation of 18 U.S.C. § 1349 (Count 1); and money laundering, in violation of 18 U.S.C. §§ 1957 and 2 (Count 2). If ENCARNACION enters a guilty plea and is sentenced on these charges and otherwise fully complies with this agreement, this Office will not initiate any further criminal charges against ENCARNACION for his scheme to fraudulently obtain approximately \$2,176,017.83 million in Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") funds from in or around May 2020 through in or around April 2021.

But if a guilty plea in this matter is not entered for any reason or a guilty plea or judgment of conviction entered in accordance with this agreement does not

remain in full force and effect, this Office may reinstate any dismissed charges and initiate any other charges against ENCARNACION even if the applicable statute of limitations period for those charges expires after ENCARNACION signs this agreement, and ENCARNACION agrees not to assert that any such charges are time-barred.

Sentencing

The violation of 18 U.S.C. § 1349 charged in Count 1 of the Information carries a statutory maximum prison sentence of 20 years and a statutory maximum fine which is the greatest of: (1) \$250,000; (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 charged in Count 2 in the Information carries a statutory maximum prison sentence of 10 years and a statutory maximum fine which is the greatest of: (1) \$250,000; (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 ENCARNACION 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. Those 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 Guidelines range may be found by the sentencing judge, or as to what sentence ENCARNACION ultimately will receive.

Further, in addition to imposing any other penalty on ENCARNACION the sentencing judge as part of the sentence:

- (1) will order ENCARNACION 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) may order ENCARNACION to pay restitution pursuant to 18 U.S.C. §§ 3563(b)(2), 3583(d), or 3663;
- (3) may order ENCARNACION, pursuant to 18 U.S.C. § 3555, to give reasonable notice and explanation of the conviction 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(c); and
- (5) pursuant to 18 U.S.C. § 3583, may require ENCARNACION to serve a term of supervised release of not more than three years on each of Counts 1 and 2, which will begin at the expiration of any term of imprisonment imposed. Should ENCARNACION be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, ENCARNACION may be sentenced to not more two years' imprisonment for each of Counts 1 and 2, 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.

Restitution

In addition, ENCARNACION agrees to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying the offenses. The parties agree that this amount shall be \$2,176,017.83.

Forfeiture

As part of his acceptance of responsibility, (1) pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), ENCARNACION agrees to forfeit to the United States all of his right, title, and interest in any property, real or personal, which constitutes or is derived from proceeds traceable to the wire fraud charged in Count One of the Information, and (2) pursuant to 18 U.S.C. § 982(a)(1), ENCARNACION agrees to forfeit to the United States, all of his right, title and interest in any and all property, real or personal, which constitutes or is derived from proceeds that the defendant obtained that are traceable to the money laundering offense charged in Count Two of the Information. ENCARNACION further agrees that the aggregate value of such property was \$1,683,883.83; that

one or more of the conditions set forth in 21 U.S.C. § 853(p) exists; and that the United States is therefore entitled to forfeit substitute assets equal to the value of the proceeds obtained by ENCARNACION (the "Forfeiture Amount"), in an amount not to exceed \$1,683,883.83 (the "Money Judgment"). ENCARNACION consents to the entry of an order requiring ENCARNACION to pay the Forfeiture Amount, in the manner described below (the "Order"), and that the Order will be final as to ENCARNACION prior to sentencing, pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, and which may be satisfied in whole or in part with substitute assets. ENCARNACION further agrees that upon entry of the Order, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate, or dispose of property sufficient to pay the Forfeiture Amount in full or in connection with any petitions filed with regard to proceeds or substitute assets, including depositions, interrogatories, and requests for production of documents, and the issuance of subpoenas.

All payments made in full or partial satisfaction of the Forfeiture Amount shall be made by postal money order, bank, or certified check, made payable in this instance to the United States Marshals Service, indicating ENCARNACION's name and case number on the face of the check; and shall be 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.

ENCARNACION further agrees to forfeit all of his right, title, and interest in the property listed on the attached Schedule B, and which ENCARNACION admits have the requisite nexus to the offenses charged in Count One of the Information and is therefore forfeitable to the United States of America pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), and 18 U.S.C. § 982(a)(1) (the "Specific Property"). ENCARNACION agrees that the Specific Property is subject to forfeiture as property, real or personal, that constitutes or is derived, directly and indirectly, from proceeds traceable to the commission of the offenses in violation of 18 U.S.C. §§ 1343 and 1349, and property involved in, or traceable to, the money laundering offense charged in Count Two of the Information. Any forfeited money and the net proceeds from the sale of the Specific Property will be applied to the Money Judgment, in partial satisfaction thereof.

ENCARNACION further consents to the administrative and/or civil judicial forfeiture of the Specific Property pursuant to 18 U.S.C. § 981(a)(1)(C). ENCARNACION hereby consents to the entry of Preliminary Orders of Forfeiture and Interlocutory Orders of Sale as to the Specific Property pursuant to Rule 32.2(b) of the Federal Rules of Criminal Procedure as the United States Attorney's Office may request. ENCARNACION agrees to execute a Preliminary Order of Forfeiture and an Interlocutory Order of Sale as to the Specific Property by the time of the plea hearing in this case. ENCARNACION agrees that he will not file a claim or a

petition for remission or mitigation in any forfeiture proceeding involving the Specific Property and will not cause or assist anyone else in doing so. To the extent ENCARNACION has filed a claim or petition in any administrative or civil judicial forfeiture proceeding involving the Specific Property, such claims or petitions are hereby deemed withdrawn. ENCARNACION further agrees to take all necessary steps to pass clear title to the Specific Property to the United States, including, but not limited to, the surrender of such property to the United States Marshals Service and the execution of all necessary documentation.

ENCARNACION 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. ENCARNACION understands that criminal forfeiture 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. ENCARNACION waives any and all constitutional, statutory, and other challenges to the forfeiture on any and all grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment. It is further understood that any forfeiture of ENCARNACION'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.

ENCARNACION further agrees that not later than the date he enters his plea of guilty he will provide a complete and accurate Financial Disclosure Statement on the form provided by the Government. If ENCARNACION fails to provide a complete and accurate Financial Disclosure Statement by the date he enters her plea of guilty, or if the Government determines that ENCARNACION has intentionally failed to disclose assets on his Financial Disclosure Statement, ENCARNACION agrees that that failure constitutes a material breach of this agreement, and the Government reserves the right, regardless of any agreement or stipulation that might otherwise apply, to oppose any downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1, and to seek leave of the Court to withdraw from this agreement or seek other relief.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office may take any position with respect to the appropriate sentence to be imposed on ENCARNACION by the sentencing judge. This Office may also correct any misstatements relating to the sentencing proceedings and provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. And 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 ENCARNACION's activities and relevant conduct with respect to this case.

Stipulations

This Office and ENCARNACION will stipulate at sentencing to the statements set forth in the attached Schedule A, which is part of this plea agreement. Both parties understand that the sentencing judge and the United States Probation Office are not bound by those stipulations and may make independent factual findings and may reject any or all of the parties' stipulations. Nor do these stipulations restrict the parties' rights to respond to questions from the Court and to correct misinformation that has been provided to the Court.

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 believes materially conflicts with a Schedule A stipulation, that stipulation shall no longer bind this Office. A determination that a Schedule A stipulation is not binding shall not release the parties from any other portion of this agreement, including any other Schedule A stipulation.

If the sentencing court rejects a Schedule A stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court did so properly. Finally, to the extent that the parties do not stipulate to a particular fact or legal conclusion in this agreement, each reserves the right to argue how that fact or conclusion should affect the sentence.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A and the paragraph below, this Office and ENCARNACION waive certain rights to appeal, collaterally attack, or otherwise challenge the judgment of conviction or sentence.

Immigration Consequences

ENCARNACION understands that, if ENCARNACION is not a citizen of the United States, ENCARNACION's guilty plea to the charged offenses will likely result in ENCARNACION being subject to immigration proceedings and removed from the United States by making ENCARNACION deportable, excludable, or inadmissible, or ending ENCARNACION's naturalization. ENCARNACION understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. ENCARNACION wants and agrees to plead guilty to the charged offenses regardless of any immigration

consequences of this plea, even if this plea will cause ENCARNACION's removal from the United States. ENCARNACION understands that ENCARNACION is bound by this guilty plea regardless of any immigration consequences. Accordingly, ENCARNACION waives any right to challenge the guilty plea, sentence, or both based on any immigration consequences. ENCARNACION also agrees not to seek to withdraw this guilty plea, or to file a direct appeal, or any kind of collateral attack challenging the guilty plea, conviction, or sentence, based on any immigration consequences of the guilty plea or sentence.

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. If requested to do so, however, this Office will bring this agreement to the attention of other prosecuting offices.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against ENCARNACION. So 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 him.

No provision of this agreement shall preclude ENCARNACION from pursuing in an appropriate forum, when permitted by law, a claim that he received constitutionally ineffective assistance of counsel.

No Other Promises

This agreement constitutes the entire plea agreement between ENCARNACION 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,

PHILIP R. SELLINGER
United States Attorney

By: s/ Mark C. Orlowski
MARK C. ORLOWSKI
Assistant United States Attorney

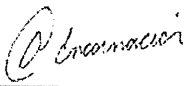
APPROVED:

s/ Joshua L. Haber

JOSHUA L. HABER
Chief, Economic Crimes Unit

I have received this letter from my attorney, Lorraine Gauli-Rufo Esq. I have read it. My attorney and I have reviewed and discussed it and all of its provisions, including those addressing the charges, sentencing, stipulations (including the attached Schedule A), waiver, forfeiture, restitution, and immigration consequences. I understand this letter fully and am satisfied with my counsel's explanations. I 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.

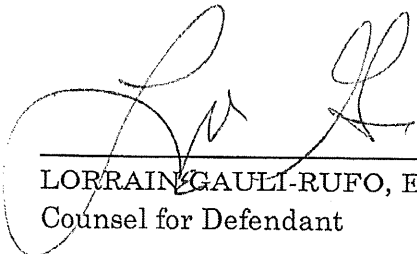
AGREED AND ACCEPTED:



ARLEN ENCARNACION

Date: 4/09/2023

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



LORRAINE GAULI-RUFO, ESQ.
Counsel for Defendant

Date:

4/9/2023

Plea Agreement With Arlen Encarnacion

Schedule A

1. This Office and ENCARNACION recognize that the United States Sentencing Guidelines do not bind the sentencing judge. Each party nevertheless agrees to these stipulations.

2. The version of the Guidelines effective November 1, 2021, applies in this case.

Count 1 — Conspiracy to Commit Wire Fraud

3. The applicable guideline for this offense is U.S.S.G. § 2B1.1. Because the offense of conviction has a statutory maximum term of imprisonment of 20 years or more, this guideline carries a Base Offense Level of 7. *See* U.S.S.G. § 2B1.1(a)(1).

4. Because the offense involved a loss amount that exceeded \$1,500,000, but not more than \$3,500,000, the Specific Offense Characteristic results in an increase of 16 levels. *See* U.S.S.G. § 2B1.1(b)(1)(I).

5. A 2-level enhancement applies because ENCARNACION derived more than \$1,000,000 in gross receipts from one or more financial institutions. *See* U.S.S.G. § 2B1.1(b)(17)(A).

6. Accordingly, the total Offense Level for Count 1 is 25.

Count 2 — Money Laundering

1. The applicable guideline for money laundering is U.S.S.G. § 2S1.1, which requires the application of U.S.S.G. § 2B1.1, the applicable guideline for the underlying offense from which the laundered funds were derived (wire fraud conspiracy, charged in Count 1). *See* U.S.S.G. § 2S1.1(a)(1). The offense level for the underlying offense is 25.

2. Because the offense charged a violation of 18 U.S.C. § 1957, a 1-level enhancement applies. *See* U.S.S.G. § 2S1.1.

3. Accordingly, the total Offense Level for Count 2 is 26.

Grouping of Multiple Counts

4. The United States and ENCARNACION agree that Counts 1 and 2 of the Information are grouped together into a single group because both counts are determined largely on the basis of the total loss. *See* U.S.S.G. § 3D1.2.

5. Pursuant to U.S.S.G. § 3D1.4, the Total Guidelines Offense Level is 26.

6. As of the date of this letter, ENCARNACION 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 ENCARNACION's acceptance of responsibility continues through the date of sentencing. *See* U.S.S.G. § 3E1.1(a).

7. As of the date of this letter, ENCARNACION 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 ENCARNACION's offense level pursuant to U.S.S.G. § 3E1.1(b) if the following conditions are met: (a) ENCARNACION enters a plea pursuant to this agreement, (b) this Office, in its discretion, determines that ENCARNACION's acceptance of responsibility has continued through the date of sentencing and ENCARNACION therefore qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and (c) ENCARNACION's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater.

8. Accordingly, the United States and ENCARNACION agree that the total Guidelines Offense Level applicable to ENCARNACION is 23.

9. The parties agree not to advocate for any upward or downward adjustment or departure from the Guidelines range resulting from (a) the Total Offense Level and (b) the criminal history category that the sentencing judge applies under Chapter 4 of the Guidelines without any departure or variance. But each party may seek a variance from that Guidelines range, which the other party may oppose.

10. If the term of imprisonment does not exceed 57 months, and except as specified in the next paragraph below, ENCARNACION will not challenge or seek to reduce by any means any component of the sentence imposed by the sentencing judge for any reason other than ineffective assistance of counsel. The term "any means" includes a direct appeal under 18 U.S.C. § 3742 or 28 U.S.C. § 1291, a motion to vacate the sentence under 28 U.S.C. § 2255, a motion to reduce the term of imprisonment under 18 U.S.C. § 3582(c)(1) or (c)(2), a motion for early termination of supervised release under 18 U.S.C. § 3583(e)(1), and any other appeal, motion, petition, or writ, however captioned, that seeks to attack or modify

any component of the sentence. If the term of imprisonment is at least 46 months, this Office will not challenge by appeal, motion, or writ any component of the sentence imposed by the sentencing judge. The provisions of this paragraph bind the parties even if the sentencing judge employs a Guidelines analysis different from the one above.

11. Both parties reserve the right to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph or any other provision of this plea agreement. Moreover, the preceding paragraph does not apply to:

- (a) Any proceeding to revoke the term of supervised release.
- (b) A motion to reduce the term of imprisonment under 18 U.S.C. § 3582(c)(1)(A).
- (c) An appeal from the denial of a § 3582(c)(1)(A) motion on the grounds that the court erred in finding no extraordinary and compelling circumstances warranting a reduced term of imprisonment or that the court failed to consider those circumstances as a discretionary matter under the applicable factors of 18 U.S.C. § 3553(a).

SCHEDULE B

- a. The contents of an account at Wells Fargo, NA, account number ending in 5095 in the name of Skycam Homes LLC;
- b. The contents of an account at Wells Fargo, NA, account number ending in 5574 in the name of Skycam Entertainment LLC;
- c. The contents of an account at TD Bank, account number ending in 7619 in the name of Skycam Auto Group LLC ;
- d. The contents of an account at Wells Fargo, NA, account number ending in 0261 in the name of Skycam Property Development LLC;
- e. The contents of an account at TD Bank, account number ending in 8725 in the name of Advance Intelligent Systems;
- f. The contents of an account at TD Bank, account number ending in 8733 in the name of Skycam Security LLC;
- g. The contents of an account at TD Bank, account number ending in 8741 in the name of Skycam Technologies LLC;
- h. The contents of an account at TD Bank, account number ending in 8759 in the name of Skycam Construction LLC;
- i. The contents of an account at TD Bank, account number ending in 8767 in the name of Skycam Enterprises and Holding LLC;
- j. The contents of an account at Bank of America, NA, account number ending in 8362 in the name of Skycam Technologies LLC;
- k. The contents of an account at Bank of America, NA, account number ending in 8537 in the name of The ISS Group LLC.