



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

Daniel Shapiro
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December 12, 2015

Timothy R. Anderson, Esq.
225 Broad Street
Red Bank, NJ 07701

Cr. 14-237 (ES)

Re: Plea Agreement with SERGEY VOVNENKO

Dear Mr. Anderson:

This letter sets forth the plea agreement between your client, SERGEY VOVNENKO, 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 December 23, 2015.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from SERGEY VOVNENKO to Count One and Count Three of the Indictment No. 14-CR-237 (ES), which Counts charge defendant: (1) in Count One, with conspiring to commit wire fraud, contrary to Title 18, United States Code, Section 1343, in violation of Title 18, United States Code, Section 1349; and (2) in Count Three, with aggravated identity theft in violation of Title 18, United States Code, Section 1028A(a)(1). If SERGEY VOVNENKO enters a guilty plea and is sentenced on this charge, this Office will not initiate any further criminal charges against SERGEY VOVNENKO for a computer hacking scheme from in or about September 2010, through in or about August 2012, as alleged in the Indictment. In addition, if SERGEY VOVNENKO fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss Counts Two, Four, Five, and Six of the Indictment. 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, SERGEY VOVNENKO 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 SERGEY VOVNENKO may be commenced against him, notwithstanding the expiration of the limitations period after SERGEY VOVNENKO signs the agreement.

Sentencing

With respect to Count One of the Indictment, the violation of 18 U.S.C. § 1349 to which SERGEY VOVNENKO agrees to plead guilty carries a statutory maximum term of 20 years' imprisonment and a statutory maximum fine of \$250,000. Fines imposed by the sentencing judge may be subject to the payment of interest.

With respect to Count Three of the Indictment, the violation of 18 U.S.C. § 1028A to which SERGEY VOVNENKO agrees to plead guilty carries a statutory mandatory minimum term of two years' imprisonment, which term of imprisonment cannot run concurrently with any term of imprisonment imposed under any other provision of law, including any term of imprisonment imposed for the felony charged in Count One of the Indictment. The sentence on Count Three must run consecutively to any other prison term imposed.

The sentence to be imposed upon SERGEY VOVNENKO 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 SERGEY VOVNENKO ultimately will receive.

Further, in addition to imposing any other penalty on SERGEY VOVNENKO, the sentencing judge: (1) pursuant to 18 U.S.C. § 3013, will order SERGEY VOVNENKO 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 SERGEY VOVNENKO 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 21 U.S.C. § 3583, may require SERGEY VOVNENKO to serve a term of supervised release of not more than ~~five~~^{three} years on Count One of the Indictment, and not more than one year on Count Three of the Indictment, which terms of supervised release will begin at the expiration of any term of imprisonment imposed. Should SERGEY VOVNENKO be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, SERGEY VOVNENKO may be sentenced to not more than ~~three~~^{two} years' imprisonment on Count One of the

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Indictment, and one year imprisonment on Count Three of the Indictment, 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 SERGEY VOVNENKO 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 SERGEY VOVNENKO's activities and relevant conduct with respect to this case.

Stipulations

This Office and SERGEY VOVNENKO 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 SERGEY VOVNENKO 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 SERGEY VOVNENKO 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 SERGEY VOVNENKO 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 SERGEY VOVNENKO 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.

SERGEY VOVNENKO 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. SERGEY VOVNENKO 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 SERGEY VOVNENKO'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. SERGEY VOVNENKO 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

SERGEY VOVNENKO 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. SERGEY VOVNENKO understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. SERGEY VOVNENKO 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. SERGEY VOVNENKO understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, SERGEY VOVNENKO 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 SERGEY VOVNENKO. 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 SERGEY VOVNENKO.

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

No Other Promises

This agreement constitutes the plea agreement between SERGEY VOVNENKO 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:


Gurbir Grewal
Chief, Economic Crimes Unit

I have received this letter from my attorney, Timothy Anderson, Esq. 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:



SERGEY VOVNENKO

Date: 14 December 2015

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.




TIMOTHY ANDERSON, ESQ.

Date: 12/14/15

S.V
TRANSLATED INTO RUSSIAN BY ATTORNEY EUGENIE VOITKEVICH ON BOTH 12/14/15 AND 12/21/15, INCLUDING ANSWERING ANY AND ALL QUESTIONS OF CLIENT SERGEY VOVNENKO.

12/21/2015
DATE



EUGENIE VOITKEVICH

Plea Agreement with SERGEY VOVNENKO

SCHEDULE A

1. This Office and SERGEY VOVNENKO recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and SERGEY VOVNENKO nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence SERGEY VOVNENKO within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and SERGEY VOVNENKO 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 for Count One of the Indictment 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 wire fraud, the applicable guideline for Count One of the Indictment is U.S.S.G. § 2B1.1.

4. Under U.S.S.G. § 2B1.1(a)(1), the base offense level is 7 because conviction of the offense charged in Count One of the Indictment carries 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 approximately \$1,333,900. This results in an increase of 14 levels.

6. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(2)(A) applies because the offense involved more than 10 victims. This results in an increase of 2 levels.

7. Specific Offense Characteristic U.S.S.G. §§ 2B1.1(b)(10)(B) and 2B1.1(b)(10)(C) apply because a substantial part of a fraudulent scheme was committed from outside the United States and the offense otherwise involved

sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means. This results in an increase of 2 levels.

8. The total offense level for Count One is 25.

Count Three

9. The applicable guideline for Count Three of the Indictment is U.S.S.G. § 2B1.6. Because SERGEY VOVNENKO is pleading guilty to Title 18, United States Code, Section 1028A, the guideline sentence is the term of imprisonment required under that statutory provision. Accordingly, the Court must impose a mandatory term of imprisonment of two years, which must run consecutively to any term of imprisonment imposed for Count One of the Indictment.

Acceptance of Responsibility

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

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

12. In accordance with the above, the parties agree that the total Guidelines offense level applicable to SERGEY VOVNENKO is 22 plus 2 years'

consecutive imprisonment on Count Three of the Indictment (the “agreed total Guidelines offense level”).

13. 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.

14. SERGEY VOVNENKO 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.

15. 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.