



U.S. Department of Justice

*United States Attorney
District of New Jersey*

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

973-645-2700

June 2, 2015

John D. Arsenault, Esq.
Arsenault & Fassett, LLP
560 Main Street
Chatham, New Jersey 07928

Re: Plea Agreement with SAMUEL DELPRESTO

Dear Mr. Arsenault:

This letter sets forth the plea agreement between your client, SAMUEL DELPRESTO (“DELPRESTO”), and the United States Attorney for the District of New Jersey (“this Office”).

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from DELPRESTO to a one-count information, which charges DELPRESTO with conspiring with others to commit securities fraud, between in or about 2007 to in or about 2010 contrary to Title 15, United States Code, Sections 78j(b) and 78ff, in violation of 18 U.S.C. § 371. If DELPRESTO enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against DELPRESTO for his involvement in stock market manipulation schemes between in or about 2007 to in or about 2013 involving the publicly traded stock of the following companies, among others: Kentucky USA Energy, Inc., (“KYUS”); Mesa Energy Holdings, Inc. (“MSEH”); Bioneutral Group, Inc., (“BONU”); Clear-Lite Holdings, Inc., (“CLRH”); NXT Nutritionals Holdings, Inc., (“NXTH”); Empire Post Media, Inc. (“EMPM”); Mustang Alliances, Inc. (“MSTG”); IDO Security, Inc. (“IDOI”); Brainy Brands Co., Inc. (“TBBC”); Premier Brands Inc. (“BRND”); and LTS Nutraceuticals, Inc. (“LTSN”). 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, defendant

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 DELPRESTO may be commenced against him, notwithstanding the expiration of the limitations period after DELPRESTO signs the agreement.

Sentencing

The violation of 18 U.S.C. § 371 to which DELPRESTO agrees to plead guilty carries a statutory maximum prison sentence of 5 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. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon DELPRESTO 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 DELPRESTO ultimately will receive.

Further, in addition to imposing any other penalty on DELPRESTO, the sentencing judge: (1) will order DELPRESTO to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order DELPRESTO to pay restitution pursuant to 18 U.S.C. § 3663 *et seq.*; (3) may order DELPRESTO, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) must order forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461; and (5) pursuant to 18 U.S.C. § 3583, may require DELPRESTO to serve a term of supervised release of not more than three years, which will begin at the expiration of any term of imprisonment imposed. Should DELPRESTO be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, DELPRESTO may be sentenced to not more than two years' imprisonment 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 DELPRESTO 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 DELPRESTO's activities and relevant conduct with respect to this case.

Stipulations

This Office and DELPRESTO 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 DELPRESTO 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 DELPRESTO 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

DELPRESTO 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, he will consent to the entry of a forfeiture money judgment in the amount of \$13,000,000 (the “Forfeiture Money Judgment”). Further, as part of his acceptance of responsibility and pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, DELPRESTO agrees to forfeit to the United States funds contained in the below bank accounts which were seized on or about January 13, 2014 (the “Specific Assets”), in partial satisfaction of the Forfeiture Money Judgment:

- a. Any and all funds contained in BMA Securities Account Number 467-01543 held in the name of MLF GROUP, LLC;
- b. Any and all funds contained in Bank of America account number 381005370043 held in the name of MLF GROUP, LLC;
- c. Any and all funds contained in Merrill Lynch Investment account number 88A-13994 held in the names of SAMUEL DEL PRESTO AND MICHELLE DEL PRESTO, JTWROS;
- d. Any and all funds contained in Merrill Lynch WCMA account number 88A-04169 held in the name of MLF HOLDINGS, LLC;
- e. Any and all funds contained in Merrill Lynch WCMA Account number 88A-04170 held in the name of FLM HOLDINGS, LLC;
- f. Any and all funds contained in Bank of America account number 003815678899 held in the names of SAMUEL DELPRESTO AND MICHELLE DELPRESTO;
- g. Any and all funds contained in Bank of America account number 381017285113 held in the name of MICHELLE DELPRESTO;
- h. Any and all funds contained in Merrill Lynch 529 College Account number 88A-86536 held in the name of FRANCESCA DELPRESTO;
- i. A sum of funds not to exceed \$136,823 from Merrill Lynch 529 College Account number 88A-86385 held in the name of LILY DELPRESTO; and
- j. A sum of funds not to exceed \$165,001 from Merrill Lynch 529 College Account number 88A-86384 held in the name of MARINA

DELPRESTO.

DELPRESTO acknowledges that the Forfeiture Money Judgment and Specific Assets are subject to forfeiture as property, real or personal, which constitutes or is derived from proceeds traceable to the conspiracy to commit securities fraud and/or represents substitute assets as described in 21 U.S.C. § 853(p).

Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure DELPRESTO agrees and consents to the entry of an Order of Forfeiture imposing the Forfeiture Money Judgment and a Preliminary Order of Forfeiture as to the Specific Assets 60 days prior to his date of sentencing.

Prior to the entry of any orders of forfeiture, DELPRESTO agrees to cooperate fully in identifying and surrendering any assets owned by DELPRESTO or otherwise subject to forfeiture. DELPRESTO also agrees to advise the United States of any single or related financial transactions he engages in excess of \$5,000 prior to sentencing.

DELPRESTO represents that he has disclosed all of his assets to the United States on the attached Financial Disclosure Statement. DELPRESTO understands that his obligation to disclose all of his assets on the attached Financial Disclosure Statement is a continuing obligations and that DELPRESTO will update the attached Financial Disclosure Statement when necessary.

DELPRESTO agrees that if the government determines that he has intentionally failed to disclose assets on the Financial Disclosure Statement, dissipates assets without the consent of the United States, or otherwise does not cooperate in the seizure and forfeiture of assets, that failure constitutes a material breach of this agreement. In addition, DELPRESTO 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 or otherwise failed to disclose to the United States. Should undisclosed assets that the defendant owns or in which the defendant has an interest be discovered, DELPRESTO knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets. DELPRESTO further agrees to execute any documents necessary to effectuate the forfeiture of said assets.

DELPRESTO further agrees to waive all interest in the Forfeiture Money Judgment, the Specific Assets, or any other assets forfeited in partial satisfaction of the Forfeiture Money Judgment, in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. DELPRESTO agrees to consent to the entry of orders of forfeiture for the Specific Assets 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. Defendant understands that the forfeiture of assets 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.

DELPRESTO hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Immigration Consequences

DELPRESTO understands that, if he is not a citizen of the United States, his guilty plea to the charged offense may 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. DELPRESTO understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. DELPRESTO understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, DELPRESTO 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 DELPRESTO. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service or the Securities and Exchange Commission), or any third party from initiating or prosecuting any civil or administrative proceeding against DELPRESTO.

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

No Other Promises

This agreement constitutes the plea agreement between DELPRESTO 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.

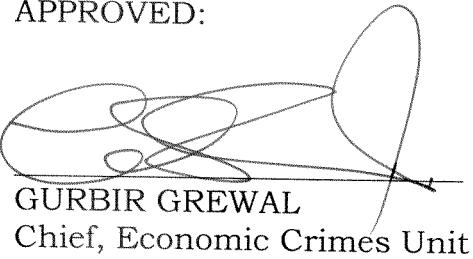
Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: NICHOLAS P. GRIPPO
Assistant U.S. Attorney

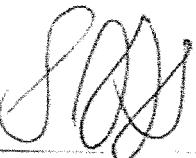
APPROVED:



GURBIR GREWAL
Chief, Economic Crimes Unit

I have received this letter from my attorney, John D. Arsenault, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge, 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.

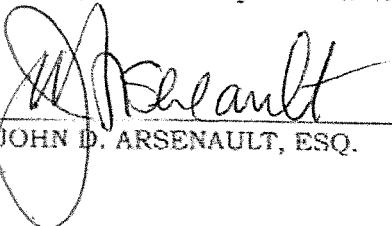
AGREED AND ACCEPTED:



SAMUEL DELPRESTO

Date: 6/3/15

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



JOHN D. ARSENAULT, ESQ.

Date: 6/3/15

Plea Agreement With SAMUEL DELPRESTO

Schedule A

This Office and Samuel DelPresto recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Samuel DelPresto nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Samuel DelPresto within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and Samuel DelPresto 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.

1) The version of the United States Sentencing Guidelines effective November 1, 2014 applies in this case. The applicable guideline for the violation of 18 U.S.C. § 371 is U.S.S.G. § 2B1.1. Pursuant to U.S.S.G. § 2B1.1(a)(2), because this agreement relates to an offense referenced to U.S.S.G. § 2B1.1, and the offense carries a statutory maximum sentence of 5 years, the Base Offense Level is 6.

2) Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(1)(K) applies in that the offense involved a loss amount of more than \$7,000,000 but not more than \$20,000,000. This Specific Offense Characteristic results in an increase of 20 levels.

3) Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(10)(C) applies in that the offense involved sophisticated means. This Specific Offense Characteristic results in an increase of 2 levels.

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

5) As of the date of this letter, Samuel DelPresto 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 Samuel DelPresto's offense level pursuant to U.S.S.G. § 3E1.1(b) if the following conditions are met: (a) Samuel DelPresto enters a plea pursuant to this agreement, (b) this Office in its discretion determines that Samuel DelPresto's acceptance of responsibility has

continued through the date of sentencing and Samuel DelPresto therefore qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and (c) Samuel DelPresto's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater.

6) In accordance with the above, the parties agree that the total Guidelines offense level applicable to Samuel DelPresto is 25 (the "agreed total Guidelines offense level").

7) 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 of 25 is reasonable.

8) Samuel DelPresto 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 a total Guidelines offense level of 25. 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 a total Guidelines offense level of 25. 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.

9) 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.