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Criminal Division

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SBM/PLEA AGR.  
2014R00498

June 9, 2015

Kelly B. Kramer, Esq.  
Mayer Brown LLP  
1999 K Street, NW  
Washington, DC 20006-1101

Re: Plea Agreement with James McClung

CR15-537(MLC)

Dear Mr. Kramer:

This letter sets forth the plea agreement between your client James McClung, the United States Department of Justice, Criminal Division, Fraud Section, and the United States Attorney for the District of New Jersey (collectively, this "Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from James McClung to a two-count Information that charges him with conspiracy to violate the Foreign Corrupt Practices Act in violation of 18 U.S.C. § 371 and a substantive count of violating the Foreign Corrupt Practices Act in violation of 15 U.S.C. § 78dd-2. If James McClung enters a guilty plea and is sentenced on these charge, and if he otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against James McClung for bribery of foreign officials in connection with his employment at Berger Group Holdings or any of its subsidiaries. Nevertheless, 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, James McClung 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 James

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

### Sentencing

The violations of 18 U.S.C. § 371 and 15 U.S.C. § 78dd-2 to which James McClung agrees to plead guilty each carry a statutory maximum prison sentence of five (5) years, and a statutory maximum fine equal to 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. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon James McClung 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 Guidelines range may be found by the sentencing judge, or as to what sentence James McClung ultimately will receive.

Further, in addition to imposing any other penalty on James McClung, the sentencing judge (1) will order James McClung to pay an assessment of \$200 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order James McClung to pay restitution, pursuant to 18 U.S.C. § 3663 *et seq.*; (3) may order James McClung, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; and (4) pursuant to 18 U.S.C. § 3583, may require James McClung to serve a term of supervised release of not more than three years per count, which will begin at the expiration of any term of imprisonment imposed. Should James McClung be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, James McClung may be sentenced to not more than two 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.

### 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 James McClung 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 James McClung's activities and relevant conduct with respect to this case.

### Stipulations

This Office and James McClung 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 James McClung 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 James McClung 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.

### Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense 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. The defendant 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. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant 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 Department of Justice, Criminal Division, Fraud Section, and 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 James McClung. 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 James McClung.

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

No Other Promises

This agreement constitutes the plea agreement between James McClung 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,

ANDREW WEISSMANN  
CHIEF, FRAUD SECTION  
CRIMINAL DIVISION  
U.S. DEPARTMENT OF JUSTICE

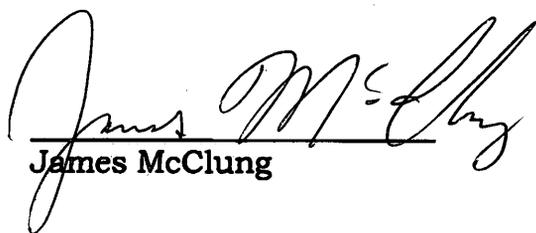
By:   
John W. Borchert, Trial Attorney

PAUL J. FISHMAN  
UNITED STATES ATTORNEY  
DISTRICT OF NEW JERSEY

  
By:   
Thomas J. Eicher  
Scott B. McBride  
Assistant United States Attorneys

I have received this letter from my attorney, Kelly B. Kramer, 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, 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.

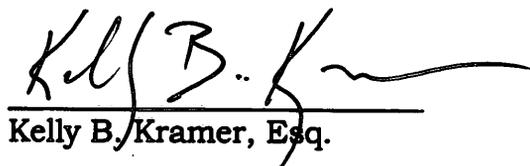
AGREED AND ACCEPTED:

  
James McClung

Date:

7/7/2015

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

  
Kelly B. Kramer, Esq.

Date:

7/9/15

Plea Agreement With James McClung

Schedule A

1. This Office and James McClung recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and James McClung nevertheless agree to the stipulations set forth herein and agree that the Court should sentence James McClung within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and James McClung 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, except as otherwise provided by this agreement.

2. The version of the United States Sentencing Guidelines effective November 1, 2014, applies in this case. Counts One and Two of the Information (the "Offenses") involve substantially the same harm and shall be grouped together into a single Group. See U.S.S.G. § 3D1.2. The guideline that applies to the Offenses is § 2C1.1. This guideline carries a Base Offense Level of 12. See § 2C1.1(a)(2).

3. Because the Offenses involved more than one bribe, the Specific Offense Characteristic addressing more than one bribe results in an increase of 2 levels. See § 2C1.1(b)(1).

4. Because the readily provable value of the payments, the benefits received or to be received in return for the payments, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government from the offense, whichever is greatest, was more than \$1,000,000, but not more than \$2,500,000, the Specific Offense Characteristic addressing loss results in an increase of 16 levels. See §§ 2C1.1(b)(2); 2B1.1(b)(1)(I).

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

6. As of the date of this letter, James McClung 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 James McClung 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 James

McClung's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, James McClung will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

7. In accordance with the above, the parties agree that the total Guidelines offense level applicable to James McClung is 27 (the "agreed total Guidelines offense level").

8. The parties agree not to seek or argue for any upward or downward departure or adjustment not set forth herein. James McClung further agrees that he will not seek a variance from the applicable Guidelines range pursuant to the factors set forth in Title 18, United States Code, Section 3553(a), except with respect to personal history or personal characteristics unrelated to the charged conduct. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level of 27 is reasonable.

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

10. 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.