

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/23/19

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

DANIEL RIVAS,
JAMES MOODHE,
ROBERTO RODRIGUEZ,
RODOLFO SABLON,
JHONATAN ZOQUIER,
MICHAEL SIVA, and
JEFFREY ROGIERS,

Defendants.

1:17-cv-06192-VM

FINAL JUDGMENT AS TO
DEFENDANT ROBERTO RODRIGUEZ

The Securities and Exchange Commission having filed a Complaint, and Defendant Roberto Rodriguez having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought, in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any

officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith
- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
 - (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
 - (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$1,108,758, but that this amount shall be deemed satisfied by the order of forfeiture entered against Defendant in *United States v. Michael Siva et al.*, 17-cr-00503-AJN (S.D.N.Y. Feb. 21, 2019) (Dkt. 145), which ordered forfeiture of \$1,108,758.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VI.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated:

23 September 2019


Victor Marrero
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

DANIEL RIVAS,
JAMES MOODHE,
ROBERTO RODRIGUEZ,
RODOLFO SABLON,
JHONATAN ZOQUIER,
MICHAEL SIVA, and
JEFFREY ROGIERS,

Defendants.

1:17-cv-06192-VM

CONSENT OF DEFENDANT ROBERTO RODRIGUEZ

1. Defendant Roberto Rodriguez ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Michael Siva et al.*, 17-cr-00503-AJN (S.D.N.Y.), Defendant pleaded guilty to violating 18 U.S.C. § 371 (Conspiracy to Commit Securities Fraud and Fraud in Connection With a Tender Offer). In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Michael Siva et al.*

3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violations of Sections

10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b), 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5, 14e-3]; and

- (b) orders Defendant liable for disgorgement in the amount of \$1,108,758, but finds that that this amount shall be deemed satisfied by the order of forfeiture entered against Defendant in *United States v. Michael Siva et al.*, 17-cr-00503-AJN (S.D.N.Y. Feb. 21, 2019) (Dkt. 145), which ordered forfeiture of \$1,108,758.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission,

within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related

conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

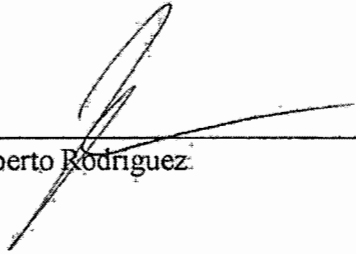
13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have

reached a good faith settlement.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

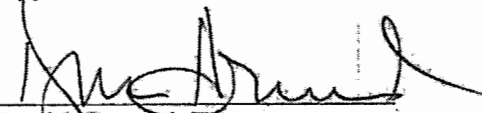
15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 7/15/19



Roberto Rodriguez

Approved as to form:



David Howard, Esq.
Attorney for Defendant

EXHIBIT A

I97WrodP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 503 (AJN) (HBP)

5 ROBERTO RODRIGUEZ,

Plea

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 7, 2018
12:20 p.m.

10
11 Before:

12 HON. HENRY B. PITMAN,

13 Magistrate Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

18 BY: ANDREA M. GRISWOLD

Assistant United States Attorney

19 DAVID A. HOWARD

Attorney for Defendant

20 Also Present: Special Agent Jonathan Polonitza, FBI
21
22
23
24
25

I97WrodP

1 (Case called)

2 MS. GRISWOLD: Good afternoon, your Honor. Andrea
3 Griswold, for the government. I'm joined by Special Agent
4 Jonathan Polonitza with the FBI.

5 MR. HOWARD: Good afternoon, your Honor. David
6 Howard, on behalf of Mr. Roberto Rodriguez, who is present.

7 THE COURT: Good afternoon.

8 MR. HOWARD: Good afternoon.

9 THE COURT: All right. I understand there's an
10 application on behalf of Mr. Rodriguez.

11 MR. HOWARD: An application, sir?

12 THE COURT: Right. I understand you're going to
13 change the previously entered plea of not guilty and enter a
14 plea of guilty to Count Twenty-One of indictment 17 Cr. 503.

15 MR. HOWARD: We so apply, your Honor.

16 THE COURT: OK.

17 Let me ask Mr. Cancellarich to place two documents
18 before Mr. Rodriguez. There's a one-page document entitled
19 "consent to proceed before a United States magistrate judge on
20 a felony plea allocution" and a document in the form of a
21 letter, which I will ask Mr. Cancellarich to mark as Court
22 Exhibit 1.

23 Mr. Rodriguez, two documents have been placed before
24 you. I first want to discuss with you the one-page document
25 entitled "consent to proceed before a United States magistrate

1 judge on a felony plea allocution."

2 Do you see that one-page document?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: Does your signature appear on the bottom
5 of it?

6 THE DEFENDANT: It does, your Honor.

7 THE COURT: Did you read it before you signed it?

8 THE DEFENDANT: I did, your Honor.

9 THE COURT: Did you discuss it with Mr. Howard before
10 you signed it?

11 THE DEFENDANT: I did, your Honor.

12 THE COURT: And do you understand that you have the
13 right to have this plea taken by a district court judge instead
14 of a magistrate judge?

15 Do you understand you have that right?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: Do you understand that by signing that
18 piece of paper, you're consenting to have your plea taken by a
19 magistrate judge and giving up your right to have your plea
20 taken by a district judge?

21 Do you understand that?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Has anyone made any promises or threats to
24 you, or has anyone used any force against you to induce you to
25 consent to proceed before a magistrate judge?

1 THE DEFENDANT: No, they have not, your Honor.

2 THE COURT: OK.

3 There's a second form before you in the form of a
4 letter marked Court Exhibit 1.

5 Do you see Court Exhibit 1?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: Does your signature appear on the last
8 page of Court Exhibit 1?

9 THE DEFENDANT: It does, your Honor.

10 THE COURT: Did you read Court Exhibit 1 before you
11 signed it?

12 THE DEFENDANT: I did, your Honor.

13 THE COURT: And did you discuss it with your attorney
14 before you signed it?

15 THE DEFENDANT: I did, your Honor.

16 THE COURT: Is that an agreement with the government
17 concerning your plea?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: OK. Thank you.

20 Would you please place Mr. Rodriguez under oath.

21 THE DEPUTY CLERK: Would you please state your name
22 for the record.

23 THE DEFENDANT: Roberto Rodriguez.

24 (Defendant sworn)

25 THE COURT: Mr. Rodriguez, you've now been placed

I97WrodP

1 under oath. If you make a false statement during these
2 proceedings, you can be prosecuted for perjury.

3 Do you understand that?

4 THE DEFENDANT: I do understand, your Honor.

5 THE COURT: Mr. Rodriguez, the law requires that I ask
6 you a number of questions to ensure that your plea is knowing
7 and voluntary in all respects; to ensure that you understand
8 what you're doing here this afternoon and to ensure that you
9 understand the consequences of what your doing.

10 If you don't understand any question that I ask you,
11 tell me that you don't understand the question and I'll either
12 try to clarify the question or give you a chance to speak
13 privately with your attorney so that you understand exactly
14 what's being asked of you.

15 In addition, if at any time during these proceedings
16 you want to speak with your attorney for any reason whatsoever,
17 just tell me that you want to speak with your attorney, and
18 I'll give you the chance to speak with him privately.

19 Do you understand that?

20 THE DEFENDANT: I understand, your Honor.

21 THE COURT: Would you please state your full name.

22 THE DEFENDANT: Roberto Rodriguez.

23 THE COURT: How old are you, sir?

24 THE DEFENDANT: I'm 33.

25 THE COURT: How far did you get in school?

I97WrodP

1 THE DEFENDANT: I have a master's degree.

2 THE COURT: A master's in?

3 THE DEFENDANT: Marketing.

4 THE COURT: Have you recently been treated for any
5 type of mental illness?

6 THE DEFENDANT: I'm currently being treated for PTSD
7 by the Department of Veteran Affairs.

8 THE COURT: By the?

9 THE DEFENDANT: Department of Veteran Affairs, VA.

10 MR. HOWARD: The Department of Veterans Affairs.

11 THE COURT: Department of Veterans Affairs. OK.

12 Are you taking any medication for that condition?

13 THE DEFENDANT: I am, your Honor.

14 THE COURT: What are you taking?

15 THE DEFENDANT: Antidepressant by the name of Effexor;
16 a antianxiety medication. I don't remember -- I think it's
17 venlafaxine; a blood pressure medication, which I do not know
18 the name, your Honor.

19 THE COURT: OK.

20 THE DEFENDANT: And melatonin, for sleep.

21 THE COURT: All right. It's currently about 12:25
22 p.m. When was the last time you took any of these medications?

23 THE DEFENDANT: At 5 a.m.

24 THE COURT: 5 a.m. this morning?

25 Do any of these medications affect your ability to

I97WrodP

1 think or to understand?

2 THE DEFENDANT: They do not.

3 THE COURT: I take it the melatonin you took last
4 night.

5 THE DEFENDANT: That's correct.

6 THE COURT: Do any of the other medications make you
7 feel sleepy or drowsy?

8 THE DEFENDANT: They do not.

9 THE COURT: Mr. Howard, I take it you've spoken with
10 Mr. Rodriguez before this afternoon's proceedings.

11 MR. HOWARD: I have, your Honor.

12 THE COURT: OK. I'm not asking you for the content of
13 any conversation, but was there anything in your conversations
14 with Mr. Rodriguez that gives you any reservations about his
15 ability to proceed?

16 MR. HOWARD: Nothing, sir.

17 THE COURT: OK.

18 Mr. Rodriguez, have you recently been treated for drug
19 addiction of any kind?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Have you recently been treated for
22 alcoholism?

23 THE DEFENDANT: I have, your Honor.

24 THE COURT: When were you treated for alcoholism?

25 THE DEFENDANT: I'm currently within, within the VA.

I97WrodP

1 THE COURT: Have you had any beer, wine or liquor
2 within the last 24 hours?

3 THE DEFENDANT: I have not.

4 THE COURT: Apart from the medications you've already
5 identified, have you taken any other kind of drugs or
6 medication within the last 24 hours?

7 THE DEFENDANT: I have not.

8 THE COURT: Apart from the conditions you've already
9 identified, the PTSD and the treatment for alcoholism, are you
10 currently being treated by any kind of doctor or other
11 healthcare provider for any other condition?

12 THE DEFENDANT: Just my, my medical conditions from
13 the, from -- within the VA. It's physical.

14 THE COURT: I see. And do any of those physical
15 conditions affect your ability to think or to understand?

16 THE DEFENDANT: They do not.

17 THE COURT: In general, do you feel clearheaded today
18 and able to understand what's going on around you?

19 THE DEFENDANT: I do.

20 THE COURT: Is either the government or defense
21 counsel aware of any physical, psychological or emotional
22 condition that might prevent Mr. Rodriguez from entering a
23 guilty plea today?

24 MS. GRISWOLD: No, your Honor.

25 MR. HOWARD: No, your Honor.

I97WrodP

1 THE COURT: Mr. Rodriguez, have you received a copy of
2 information 17 Cr. 503, which has been filed against you?

3 THE DEFENDANT: Yes, I have, your Honor.

4 THE COURT: Have you had a chance to read that
5 charging document and to discuss it with your attorney,
6 Mr. Howard?

7 THE DEFENDANT: I have, your Honor.

8 THE COURT: Are you generally satisfied with
9 Mr. Howard's representation of you in this case and with the
10 advice that he's given to you?

11 THE DEFENDANT: I am, your Honor.

12 THE COURT: All right. I want to discuss with you
13 briefly the nature of the charge against you in Count
14 Twenty-One, the elements the government would have to prove to
15 establish your guilt at trial and the penalties you face if
16 your plea is accepted.

17 Do you understand that Count Twenty-One charges you
18 with the offense of securities fraud -- excuse me. I misspoke.

19 Do you understand that Count Twenty-One charges you
20 with the offense of conspiracy to commit securities fraud, in
21 violation of Title 18, United States Code, Section 371?

22 Do you understand that's the nature of the charge
23 against you?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that in order to

I97WrodP

1 establish your guilt at trial, the government would have to
2 prove three elements beyond a reasonable doubt?

3 First, that there was an agreement between two or more
4 persons to commit the offense of securities fraud;

5 Second, that you knowingly entered into and became
6 part of that agreement with knowledge of its illegal object;
7 and

8 Third, that at least one of the overt acts alleged in
9 the indictment was committed in furtherance of the conspiracy
10 to commit securities fraud.

11 Do you understand those are the elements the
12 government would have to prove at trial to establish your
13 guilt?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that if your plea is
16 accepted, you face a maximum sentence of five years'
17 imprisonment; a maximum term of supervised release of three
18 years; a maximum fine of the greatest of \$250,000, or twice the
19 gross pecuniary gain derived from the offense or twice the
20 gross pecuniary loss to persons other than yourself; a
21 mandatory special assessment of \$100; and that in addition to
22 the foregoing, the court must also enter an order of
23 restitution directing that you pay back to any victim any
24 ill-gotten gain or any loss that the victim has suffered as a
25 result of your conduct?

I97WrodP

1 Do you understand those are the penalties you face?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that under the
4 Sentencing Reform Act of 1984, the United States Sentencing
5 Commission has issued advisory guidelines for judges to consult
6 in imposing sentences in criminal cases?

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you and Mr. Howard discussed how the
10 guidelines might apply in your case?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And do you understand that Judge Nathan,
13 the judge that's going to sentence you in this case, will not
14 be able to determine the guidelines sentence for your case
15 until a document called a presentence report has been prepared
16 and until both you and the government have the opportunity to
17 review the report and make any challenges you have to the facts
18 in the report and to the guideline range recommended by the
19 probation department?

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And do you understand that the guideline
23 range found to apply in your case may turn out to be different
24 from any range you've discussed with your attorney or any range
25 you've agreed to with the government?

I97WrodP

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that in determining your
4 sentence, the court is obligated to calculate the applicable
5 sentencing guideline range and to consider that range, possible
6 departures under the sentencing guidelines and the other
7 factors set forth in Title 18, United States Code, Section
8 3553?

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that after your
12 guideline range has been determined, the court has the
13 authority to depart from the guidelines and to impose a
14 sentence that's either more severe or less severe than the
15 sentence called for by the guidelines?

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that the form of early
19 release known as parole has been abolished in the federal
20 system and that if you are sentenced to a term of imprisonment,
21 you will not be released on parole?

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that if supervised
25 release is imposed as part of your sentence and you violate any

1 term of the supervised release, you can be returned to jail for
2 the full term of supervised release with no credit being given
3 for the time spent on release up to the date of the violation?

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that as part of your
7 agreement with the government, you are stipulating to a
8 guideline range of 37 to 46 months' imprisonment, and you are
9 giving up any appellate rights you might have with respect to
10 your sentence so long as the sentence is not greater than 46
11 months?

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand, however, that both
15 parties are retaining the right to argue before Judge Nathan
16 that a sentence either above or below the stipulated guidelines
17 range is appropriate?

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that if Judge Nathan
21 imposed a sentence of less than 37 months, the government could
22 appeal that sentence and seek a sentence within the range of 37
23 to 46 months?

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

I97WrodP

1 THE COURT: Do you understand that if Judge Nathan
2 imposed a sentence of greater than 46 months, your appellate
3 rights with respect to the sentence would be limited to an
4 appeal to seek a sentence within the stipulated range of 37 to
5 46 months?

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that if Judge Nathan
9 imposed a sentence above 46 months, you would not be permitted
10 to withdraw your guilty plea simply because the sentence was
11 greater than you expected?

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Rodriguez, something I didn't mention
15 before that I should have mentioned, do you understand that a
16 plea to a felony can have serious immigration consequences for
17 individuals who are not United States citizens.

18 Do you understand that if you are not a United States
19 citizen, another consequence of your plea is that at the
20 conclusion of your sentence, you will be deported, or removed,
21 from the United States and prohibited from ever reentering the
22 United States, but that's only a consequence if you're not a
23 United States citizen?

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

I97WrodP

1 THE COURT: I want to discuss with you some of the
2 rights you're giving up by pleading guilty.

3 Do you understand that you have the right to plead not
4 guilty to the charges against you, and you have the right to
5 persist in that plea at all stages of the proceedings against
6 you?

7 Do you understand you have those rights?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that if you chose to
10 plead not guilty, you'd have the right to the assistance of
11 counsel at all stages of the proceedings against you, and you'd
12 have the right to have counsel appointed for you if you could
13 not afford counsel?

14 Do you understand you have those rights?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that if you chose to
17 plead not guilty, you'd have the right to a trial by jury?

18 At the trial, you'd be presumed innocent, and the
19 government would have to prove your guilt beyond a reasonable
20 doubt.

21 At a trial, you would have the right to the assistance
22 of counsel and the right to have counsel appointed for you if
23 you could not afford counsel. You'd have the right to see and
24 hear all the witnesses against you, and you'd have the right to
25 have those witnesses cross-examined, or questioned, in your own

I97WrodP

1 defense.

2 At a trial, you'd have the right to testify and the
3 right to offer evidence in your defense. Conversely, you'd
4 have the right to decline to testify or to decline to offer
5 evidence, and if you chose not to testify or chose not to offer
6 evidence, those facts could not be used against you.

7 Finally, at a trial, you'd have the right to the
8 issuance of compulsory process or court orders to compel
9 witnesses to come to court and give testimony on your behalf.

10 Do you understand you would have all those rights if
11 you chose to plead not guilty and go to trial?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that by pleading guilty,
14 you're giving up your right to a trial and all the rights
15 associated with a trial that I've just described to you?

16 Do you understand you're giving up all those rights?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Apart from the agreements that are set
19 forth in Court Exhibit 1, the letter agreement that you
20 identified at the outset of these proceeding, has anyone made
21 any other promises to you, or has anyone made any threats to
22 you or has anyone used any force against you, in order to
23 induce you to plead guilty?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: And are you pleading guilty because you

I97WrodP

1 are in fact guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. Can you tell us, please, what
4 it is you did that makes you guilty of the offense charged in
5 Count Twenty-One, conspiracy to commit securities fraud.

6 THE DEFENDANT: A friend of mine named Daniel Rivas
7 worked at Bank of America, and he and I agreed that he would
8 give me information that he was not supposed to disclose and
9 that was not publicly available and that I would use that
10 information to make financial transactions.

11 THE COURT: To make what transactions?

12 THE DEFENDANT: Financial transactions.

13 And I did make such financial transactions, knowing
14 that what I was doing was illegal.

15 THE COURT: And the financial transactions involved
16 were the purchases or sales of securities, is that right?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: When did this conduct take place; what
19 year?

20 THE DEFENDANT: It took place in 2016, 2017.

21 THE COURT: OK. And the conduct in which you engaged,
22 where did it take place?

23 THE DEFENDANT: It was --

24 (Counsel and defendant conferred)

25 THE DEFENDANT: Mr. Rivas was here in the Southern

I97WrodP

1 District of New York. I was in the Southern District of
2 Florida.

3 THE COURT: I see. But you had an agreement with
4 Mr. Rivas, is that right?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Does the government believe any further
7 inquiry is necessary concerning the facts of the offense?

8 MS. GRISWOLD: No, your Honor.

9 I would like to proffer that the financial
10 transactions or the purchases here were both securities and
11 involved tender offers. It is a dual-object conspiracy charged
12 in Count Twenty-One. I don't believe the elements require that
13 the defendant knew they were tender offers, but just to make
14 the record complete.

15 THE COURT: OK. All right. Does the government
16 represent that it has facts in its possession to prove
17 Mr. Rodriguez's guilt beyond a reasonable doubt?

18 MS. GRISWOLD: Yes, it does, your Honor.

19 THE COURT: Mr. Rodriguez, how do you plead to the
20 charge of conspiracy to commit securities fraud; guilty or not
21 guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: All right.

24 Does the government believe any further inquiry should
25 be made concerning any matter?

I97WrodP

1 MS. GRISWOLD: I'd ask that the Court inquire as to
2 whether or not the defendant admits the forfeiture allegation.

3 THE COURT: Mr. Rodriguez, it's my understanding that
4 as part of your agreement with the government, you're also
5 agreeing to forfeit, or give over, to the government any
6 proceeds of the conspiracy to which you have pled guilty or
7 anything you purchased with the proceeds. Is that right?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Does that cover it?

10 MS. GRISWOLD: That covers it, your Honor.

11 I may have missed it. The penalties, were those set
12 forth on the record?

13 THE COURT: Yes.

14 MS. GRISWOLD: They were, OK. I apologize if I missed
15 the penalties.

16 MR. HOWARD: There was a discussion regarding the
17 guideline range at length.

18 MS. GRISWOLD: I heard the discussion regarding the
19 guidelines range. I didn't hear the statutory part, which may
20 be my fault.

21 THE COURT: Out of an abundance of caution, let me
22 restate them.

23 Mr. Rodriguez, do you understand that the conspiracy
24 count to which you're pleading guilty carries a maximum
25 sentence of imprisonment of five years; a maximum term of

1 supervised release of three years; a maximum fine of the
2 greatest of \$250,000, or twice the gross pecuniary gain derived
3 from the offense or twice the gross pecuniary loss to persons
4 other than yourself plus a mandatory special assessment of
5 \$100; and that in addition to the foregoing, the court must
6 also enter an order of restitution directing that you pay back
7 to any identifiable victims any ill-gotten gain or any loss
8 that they suffered as a result of your conduct?

9 Do you understand those are the maximum penalties you
10 face?

11 THE DEFENDANT: Yes, your Honor.

12 MS. GRISWOLD: Thank you, your Honor.

13 THE COURT: Mr. Howard, do you believe any further
14 inquiry should be made concerning any subject?

15 MR. HOWARD: I do not, sir.

16 THE COURT: All right.

17 Based upon Mr. Rodriguez's physical appearance, his
18 demeanor and his answers to all the foregoing questions, I find
19 that he is fully competent and capable of entering an informed
20 and voluntary plea; that he's aware of the nature of the charge
21 against him and the consequences of the plea; and that the plea
22 is knowing and voluntary and supported by an independent basis
23 in fact as to each of the essential elements of the offense. I
24 therefore accept the plea and recommend that Judge Nathan
25 accept the plea.

1 Has Judge Nathan set a date and time for sentencing?

2 MS. GRISWOLD: No, your Honor.

3 THE COURT: All right. I'm going to direct the
4 government to contact Judge Nathan this afternoon to make sure
5 that she knows that Mr. Rodriguez has pled guilty.

6 A presentence report will be ordered. We will mark
7 the form that defense counsel should be present for the
8 interview.

9 I'm going to direct Mr. Howard to contact the
10 probation department promptly to schedule a presentence
11 interview within the next 14 days.

12 I'm also going to direct the government to submit the
13 prosecution case summary to the probation department within the
14 next 14 days.

15 Anything else?

16 MS. GRISWOLD: No, your Honor. Thank you.

17 MR. HOWARD: Nothing further.

18 THE COURT: OK. Thank you, all.

19 (Adjourned)

20

21

22

23

24

25



**United States District Court
Southern District of New York**

Ruby J. Krajick
Clerk of Court

Dear Litigant:

Enclosed is a copy of the judgment entered in your case. If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

You must file your notice of appeal in this Court within 30 days after the judgment or order that you wish to appeal is entered on the Court's docket, or, if the United States or its officer or agency is a party, within 60 days after entry of the judgment or order. If you are unable to file your notice of appeal within the required time, you may make a motion for extension of time, but you must do so within 60 days from the date of entry of the judgment, or within 90 days if the United States or its officer or agency is a party, and you must show excusable neglect or good cause for your inability to file the notice of appeal by the deadline.

Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

The filing fee for a notice of appeal is \$505 payable in cash, by bank check, certified check, or money order, to "Clerk of Court, S.D.N.Y." *No personal checks are accepted.* If you are unable to pay the \$505 filing fee, complete the "Motion to Proceed *in Forma Pauperis* on Appeal" form and submit it with your notice of appeal to the Pro Se Intake Unit. If the district court denies your motion to proceed *in forma pauperis* on appeal, or has certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith, you may file a motion in the Court of Appeals for leave to appeal *in forma pauperis*, but you must do so within 30 days after service of the district court order that stated that you could not proceed *in forma pauperis* on appeal.

For additional issues regarding the time for filing a notice of appeal, see Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the rules of the Second Circuit Court of Appeals and the Federal Rules of Appellate Procedure. For more information, visit the Second Circuit Court of Appeals website at <http://www.ca2.uscourts.gov/>.

**THE DANIEL PATRICK MOYNIHAN
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007-1312**

**THE CHARLES L. BRIEANT, JR.
UNITED STATES COURTHOUSE
300 QUARROPAS STREET
WHITE PLAINS, NY 10601-4150**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____ CV _____ () ()

-against-

NOTICE OF APPEAL

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: _____

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the judgment order entered on: _____
(date that judgment or order was entered on docket)

that:

(If the appeal is from an order, provide a brief description above of the decision in the order.)

Dated

Signature*

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____ CV _____ () ()

-against-

**MOTION FOR EXTENSION
OF TIME TO FILE NOTICE
OF APPEAL**

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on _____ but did not file a notice of appeal within the required date time period because:

(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

Dated:

Signature

Name (Last, First, MI)

Address City State Zip Code

Telephone Number

E-mail Address (if available)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____CV____ () ()

-against-

**MOTION FOR LEAVE TO
PROCEED IN FORMA
PAUPERIS ON APPEAL**

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

Dated

Signature

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

Application to Appeal In Forma Pauperis

_____ v. _____ Appeal No. _____
 District Court or Agency No. _____

<p>Affidavit in Support of Motion</p> <p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: _____</p>	<p>Instructions</p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	<u>Spouse</u>	You	<u>Spouse</u>
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$

Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$	\$	\$	\$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [] Yes [] No Is property insurance included? [] Yes [] No	\$	\$
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$	\$
Home maintenance (repairs and upkeep)	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$

Transportation (not including motor vehicle payments)	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
Total monthly expenses:	\$	\$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

Yes No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* Yes No

If yes, how much? \$ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *Identify the city and state of your legal residence.*

City _____ State _____

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____