



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

December 20, 2011

**By Electronic Mail**  
Robert J. Cleary, Esq.  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036

**Re: United States v. Brent Beckley, S3 10 Cr. 336 (LAK)**

Dear Mr. Cleary:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Brent Beckley ("the defendant") to Counts One and Eight of the above-referenced Indictment.

Count One charges the defendant with conspiracy to violate the Unlawful Internet Gambling Enforcement Act ("UIGEA"), in violation of Title 18, United States Code, Section 371, and carries a maximum term of imprisonment of 5 years' imprisonment, a maximum term of supervised release of 3 years, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment.

Count Eight charges the defendant with conspiracy to commit bank fraud and wire fraud, in violation of Title 18, United States Code, Section 1349. Count Eight carries a maximum term of imprisonment of 30 years' imprisonment, a maximum term of supervised release of 5 years, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$1,000,00, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment.

In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A and 3664 of Title 18, United States Code.

The defendant furthermore admits the forfeiture allegations with respect to Counts One and Eight of the Indictment and agrees to forfeit to the United States \$300,000, constituting the proceeds from the conduct charged in Counts One and Eight of the Superseding Information (the "Money Judgment"). The defendant shall pay \$75,000 of the money judgment on or before the date of sentencing, and the balance shall be paid no later than the completion of any term of supervised release or probation imposed at sentence. It is understood that nothing in this Agreement precludes the Government from seeking additional forfeiture should in the event representations made by the defendant about his assets, prior to entry of this agreement, are materially inaccurate. It is further understood that any forfeiture of the defendant'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.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for, from 2003 through April 15, 2011, (i) operating and accepting payments for an internet gambling business, to wit the websites operating as Absolute Poker, Ultimate Bet and their affiliated corporate entities (hereinafter "Absolute Poker"), as charged in Counts One, Four and Seven of the Superseding Indictment; (ii) misrepresenting payment transactions for Absolute Poker to financial institutions, as charged in Count Eight of the Indictment; and (iii) transferring funds to and from the United States to promote the continued operations of Absolute Poker, as charged in Count Nine of the Indictment. In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

**A. Offense Level**

1. Pursuant to U.S.S.G §§ 3D1.2(b) and (d), Counts One and Eight constitute a single group of closely related counts.

2. Pursuant to U.S.S.G. § 3D1.3, the applicable guideline range for Counts One and Eight is the guideline covering the grouped offenses that results in the highest offense level.
3. The applicable Guideline covering Count One is U.S.S.G. § 2E3.1, and the offense level pursuant to §2E3.1(a)(1)(A) is 12 because the offense involved the operation of a gambling business.
4. The applicable Guideline covering Count Eight is § 2B1.1. Pursuant to U.S.S.G. § 2B1.1(a)(1) the base offense level is 7 and is increased to 12 pursuant to U.S.S.G. § 2B1.1(b)(9) because a substantial part of the scheme took place outside the United States.
5. Accordingly, the offense level is 12 for the group of Count One and Count Eight.
6. Pursuant to U.S.S.G. § 3B1.1(b), there is a 3 level increase because the defendant was a manager or supervisor of the criminal activity.
7. In accordance with the above, the offense level for Group One is 15.
8. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a).

In accordance with the above, the applicable Guidelines offense level 13.

**B. Criminal History Category**

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history.

In accordance with the above, the defendant's Criminal History Category is I.

**C. Sentencing Range**

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 12 to 18 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after

determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 13, the applicable fine range is \$3,000 to \$30,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence outside of the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from

those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 12 to 18 months' imprisonment, and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may

Robert J. Cleary  
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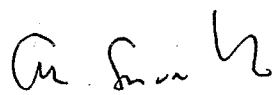
be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed. It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

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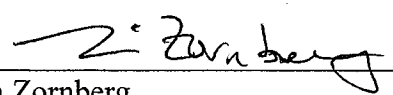
Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

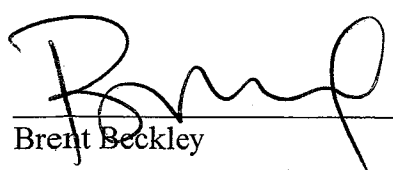
PREET BHARARA  
United States Attorney

By:   
Arlo Devlin-Brown  
Niketh Velamoor  
Assistant United States Attorneys

APPROVED:

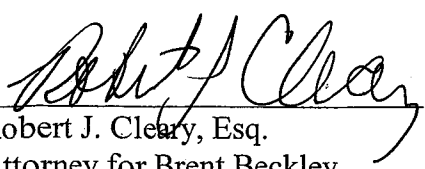
  
Lisa Zornberg  
Chief, Complex Frauds Unit

AGREED AND CONSENTED TO:

  
Brent Beckley

20/Dec/2011  
Date

APPROVED:

  
Robert J. Cleary, Esq.  
Attorney for Brent Beckley

12/20/11  
Date