

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 DALE J. LANGE, M.D. : NO. 98-472-01

MEMORANDUM AND ORDER

HUTTON, J.

April 12, 1999

Presently before the Court are the Government's Change of Plea Memorandum (Docket No. 8), Defendant Dale J. Lange's Change of Plea Memorandum (Docket No. 9), and the parties' Joint Memorandum of Law (Docket No. 11). For the following reasons, the relief sought is denied and the Court rejects the guilty plea agreement.

I. BACKGROUND

The Defendant, Dale Lange, M.D., was a neurologist at Columbia-Presbyterian Hospital in New York. As part of his employment, Cephalon, Inc. invited Lange to serve as a principal investigator in a study conducted on a product developed to fight amyotrophic lateral sclerosis. Lange agreed to participate in this study. As a result, Lange "was privy to non-public information that Cephalon believed its product was a success and was going to make an announcement to that effect." Government's Change of Plea Mem. at 4. After learning this information, Lange purchased 2,500 shares of Cephalon stock for \$24,467.80. Lange later sold these

shares, as well as 500 shares previously purchased, for a profit of approximately \$25,000.

On September 17, 1998, the Government filed an indictment charging Lange with one count of insider trading in violation of 15 U.S.C. §§ 78ff(a) and 78j(b). Subsequently, the Government and Defendant entered into a written plea agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The Defendant describes the plea agreement as follows:

Lange will plead guilty to one count of misdemeanor violation of 15 U.S.C. §§ 78j(b) and 78ff(a) and 17 C.F.R. § 240.10b-5. The government acknowledges that Dr. Lange will produce evidence he had no knowledge of 15 U.S.C. §§ 78j(b) and 78ff(a) and 17 C.F.R. § 240.10b-5 and therefore should be sentenced pursuant to the "no jail term" section of the statute. The government agrees to introduce no evidence that will oppose or rebut Dr. Lange's position. The government further agrees that should the Court decline to sentence Dr. Lange pursuant to the "no jail" provision of the statute, he may withdraw his guilty plea.

Def.'s Change of Plea Mem. at 3. The Government and Defendant also agree that the appropriate sentence in this matter is 500 hours of community service at a hospital located in Haiti. The Government and Defendant also agree that the Defendant shall pay a \$10,000 fine and \$50.00 special assessment.

On March 1, 1999, the Court held a hearing to clarify several issues regarding the guilty plea agreement. At the hearing, the Court expressed a concern that the Defendant may not fall within the "no knowledge" provision of the statute. On March

10, 1999, the parties submitted a joint memorandum in support of the plea agreement.

II. DISCUSSION

"The plea bargain is an indispensable tool for the administration of the criminal law." United States v. Torres-Echavarria, 129 F.3d 692, 695 (2d Cir. 1997). Nevertheless, it is appropriate for a judge to scrutinize a deal struck by the prosecutor and defense counsel. See id. "A trial judge is not required to accept every constitutionally valid [i.e., knowing, voluntary and intelligent] guilty plea merely because a defendant wishes so to plead" United States v. Severino, 800 F.2d 42, 45 (2d Cir. 1986). Thus, it is within the sound discretion of the district court to reject or accept any plea agreement. See Santobello v. New York, 404 U.S. 257, 262 (1971) ("There is, of course, no absolute right to have a guilty plea accepted. A court may reject a plea in exercise of sound judicial discretion." (citations omitted)); Torres-Echavarria, 129 F.3d at 695 (noting that a trial judge may reject a plea in the exercise of sound judicial discretion); United States v. Barker, 681 F.2d 589, 592 (9th Cir. 1982) (same); see also United States v. Ruch, 906 F. Supp. 261, 264 (E.D. Pa. 1995) (noting that, while court of appeals are split over whether a district court must state reasons for rejecting plea agreements, the better practice is to set forth reasons).

In this case, the Court rejects the guilty plea agreement entered into by the Government and Defendant. According to the plea agreement, if the Court refuses to sentence the Defendant pursuant to the "no knowledge" provision, the Defendant may withdraw his guilty plea. This provision flies in the face of the Constitutional required guilty plea colloquy between the Court and the Defendant. During such a colloquy, this Court must inform the Defendant that he will not be able to withdraw his guilty plea if the Court makes the factual finding that he does not fall within the "no knowledge" provision. See Fed. R. Crim. P. 11(e)(2) (noting that if the plea agreement is of the type that the government will not oppose a defendant's request for a particular sentence, then the court shall "advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw the plea"). Thus, the plea agreement is inconsistent with the Federal Rule of Criminal Procedure under which the Court may accept the Defendant's guilty plea.

Furthermore, the plea agreement makes a mockery of the independence of the judiciary. The plea agreement binds the Court to a particular sentence agreed upon by the parties-- no jail sentence, a \$10,000 fine, and 500 hours of hours of community service at a Haitian hospital-- with the threat that the Defendant will withdraw his plea should the Court refuse to issue that exact

sentence. The Court cannot and will not accept such a plea agreement.

An appropriate Order follows.

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O R D E R

AND NOW, this 12th day of April, 1999, upon consideration of the Government's Change of Plea Memorandum (Docket No. 8), Defendant Dale J. Lange's Change of Plea Memorandum (Docket No. 9), and the parties' Joint Memorandum of Law (Docket No. 11), IT IS HEREBY ORDERED that the relief sought is **DENIED** and the Court **REJECTS** the guilty plea agreement.

BY THE COURT:

HERBERT J. HUTTON, J.