



KAREN D. McDONALD

Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

MEMORANDUM

TO: STEVEN FISHMAN, ESQ.
ATTORNEY FOR NICK EJAK

FROM: MARC A. KEAST
CHIEF – CIRCUIT COURT DIVISION
OAKLAND COUNTY PROSECUTOR'S OFFICE

SUBJECT: PROFFERED STATEMENT OF NICK EJAK

DATED: DECEMBER 29, 2021

PROFFER AGREEMENT

Re: Your client: Nick Ejak

Dear Counsel: Steven Fishman

You have advised that your client, Nick Ejak, wishes to meet with the Oakland County Prosecutor's Office to provide information in a proffer. This office is willing to meet with your client under the terms set forth in this letter agreement.

- (1) **Definitions.** For the purposes of this agreement, "this office" refers only to the Oakland County Prosecutor's Office. The "government" refers to this office and any law enforcement agency working directly or indirectly with this office in connection with this or any related investigation, including all other State of Michigan investigatory agencies. "Proffer session" refers to any interview, meeting, discussion, or communication of any kind, whether oral or in writing, between your client and the government that is subsequent to this letter agreement. "Proffer statement" refers to any statement made by your client in a proffer session.
- (2) **The purpose of a proffer.** This office's purposes in participating in a proffer session include: (a) to receive truthful information from your client, including information about possible criminal activity by your client and others; and (b) to evaluate your client's credibility as a source of information and potential witness. In return, this office will consider your client's proffer statements in

deciding how to resolve this investigation as it relates to your client and any charges pending against your client being prosecuted by this office.

- (3) **No promises of favorable consideration.** Your client is not entitled to any consideration regarding pending or possible charges or sentence recommendations by the government just because your client participates in a proffer session. Such consideration, if any, will be unilaterally determined by the government only after your client's proffer is evaluated. The government makes no representation about the likelihood that any additional agreement will be reached as a result of the proffer.
- (4) **Inapplicability of rules pertaining to plea discussions.** Any use of the statements and information provided at a proffer session is governed by the terms of this letter, and not Michigan Court Rule 6.302 or Michigan Rule of Evidence 410 (pertaining to plea discussions).
- (5) **Obligation to tell the truth.** Your client agrees that any information provided by your client will be truthful and complete. This means, for example, that your client may not provide false facts or omit facts about crimes, other participants, or his or her knowledge of or involvement in offenses, and must volunteer all information that is reasonably related to these subjects. Your client must be completely truthful about the facts, whatever those may be.
- (6) **Restrictions on use of proffer statements.**
 - (a) **To prove guilt.** Except as otherwise specified in this agreement, this office will not offer any proffer statement made by you or your client in this office's case-in-chief in any criminal prosecution of your client.
 - (b) **At sentencing.** Except as otherwise specified in this letter, if your client is convicted, this office will not use your client's proffer statements as direct evidence in support of any increase to the applicable offense level under the State of Michigan Sentencing Guidelines or in support of any upward deviation from the applicable guideline range. But this office retains the right to otherwise use your client's proffer statements at sentencing. And this office may also use for sentencing purposes all information previously known to the government, and all information obtained or discoverable through another source.
- (7) **Permissible uses of proffer statements.**
 - (a) **Cross-examination and rebuttal of inconsistencies.** This office may use your client's proffer statements in any proceeding to cross-examine your client. This office may use your client's proffer statements to counter any evidence, assertion of facts or theories, or argument offered by or on behalf of your client at any trial, sentencing or other legal proceeding that is

inconsistent with any proffer statement made by your client, including testimony of any witness elicited by your client or an attorney representing your client, on direct or cross-examination, and any reasonable inference suggested by evidence offered or elicited by or on behalf of your client. This provision is necessary to ensure that no court or jury is misled by receiving information inconsistent with that provided by your client during the proffer session.

(b) **Derivative use of information.** There is no restriction on this office's use of any evidence derived directly or indirectly from your client's proffer statements.

(8) **Consequences of failure to tell the truth, nondisclosure, and misleading the government.**

(a) Your client's obligations in paragraph (5) are material terms of this agreement. Your client understands and agrees that failing to comply with those obligations constitutes a breach of this agreement. A breach of this agreement is not cured by providing truthful information on other matters. If your client fails to provide truthful and complete information on any matter discussed by your client during a proffer session, there are no restrictions on this office's use of your client's proffer statements or information provided by you or your client.

(b) If your client fails to provide truthful and complete information, this office may bring charges against your client based upon a knowing failure to provide truthful and complete information, such as perjury, obstruction of justice, and false statements charges.

(9) **Complete agreement.** This letter is the complete agreement between this office and your client concerning the subject matter of this agreement.

Karen D. McDonald
Oakland County Prosecutor

By: _____

Marc A. Keast (P69842)
Chief – Circuit Court Division

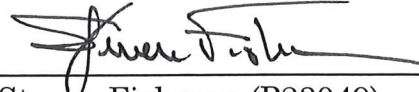
(10) **Acknowledgment and agreement.** By signing below, we acknowledge that we have read (or been read) this entire document, understand it, and agree to its terms. The client also acknowledges that he or she is satisfied with his or her

attorney's advice and representation. The client agrees that he or she has had a full and complete opportunity to confer with his or her lawyer, and has had all questions answered by his or her lawyer.



Nick Ejak
Client

Dated: 12/30/21



Steven Fishman (P23049)
Counsel for Client

Dated: 12/30/21