



**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*

October 5, 2007

F. Hill Allen, Esq.  
Tharrington Smith, LLP  
209 Fayetteville Street  
Raleigh, North Carolina 27602

Re: United States v. Marion Jones  
S6 05 Cr. 1067 (KMK)

Dear Mr. Allen:

On the understandings specified below, the Offices of the United States Attorney for the Southern District of New York and the Northern District of California ("these Offices") will accept a guilty plea from Marion Jones (the "defendant") to Counts One and Two of the above-referenced Superseding Information (the "Superseding Information").

Counts One and Two of the Superseding Information each charge the defendant with making false statements to a Government agency, in violation of 18 U.S.C. § 1001. Each Count of the Superseding Information carries a maximum sentence of 5 years' imprisonment; a maximum term of supervised release of 3 years; a maximum fine 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 mandatory \$100 special assessment.

The total maximum term of imprisonment on Counts One and Two of the Superseding Information is 10 years' imprisonment.

In addition to the foregoing, the Court must order restitution to any victims of the offenses charged in the Superseding Information, in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664.

In consideration of her plea to the above offenses, the defendant will not be further prosecuted criminally by these Offices (except for criminal tax violations as to which these Offices cannot, and do not, make any agreement) for: (a) false statements made by the defendant and related conduct in connection with the investigation of Balco Laboratories, Inc., in or about November 2003; (b) false statements made by the defendant during interviews with a Special Agent of the Department of Homeland Security, Immigration and Customs Enforcement, on or about August 2, 2006, and September 5, 2006; (c) any conduct relating to checks in the amount

of \$25,000 to the defendant deposited in or about April 2005 and in the amount of \$200,000 to TM & Associates deposited in or about May 2005. In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges she 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 Section 6B1.4 of the United States Sentencing Guidelines (the "Guidelines" or "U.S.S.G."), the parties hereby stipulate to the following:

**A. Offense Level**

1. Counts One and Two of the Superseding Information charge violations of 18 U.S.C. § 1001 and, accordingly, the offenses constitute a single group, pursuant to U.S.S.G. § 3D1.2(d).
2. The group comprised of Counts One and Two of the Superseding Information is governed by U.S.S.G. § 2B1.1.
3. The base offense level applicable to the group comprised of Counts One and Two of the Superseding Information is 6.
4. Assuming that the defendant clearly demonstrates her acceptance of responsibility to the satisfaction of the Government, through her allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a).

In accordance with the above, the applicable Sentencing Guidelines offense level is 4.

**B. Criminal History Category**

Based on information currently available to these Offices, the defendant has 0 criminal history points and, accordingly, the defendant's Criminal History Category is I.

**C. Sentencing Range**

Based upon the calculations set forth above, the defendant's stipulated Sentencing Guidelines range is 0 to 6 months (the "Stipulated Guidelines Range"). Furthermore, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Sentencing Guidelines level 4, the applicable fine range is \$250 to \$5,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range of 0 to 6 months is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, nor suggest that the Court sua sponte consider such a departure or adjustment.

The parties further agree that a sentence within the Stipulated Guidelines Range of 0 to 6 months would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a). In addition, neither party will seek a sentence outside of the Stipulated Guidelines Range of 0 to 6 months, suggest that the Probation Department consider a sentence outside of the Stipulated Guidelines Range of 0 to 6 months, or suggest that the Court sua sponte consider a sentence outside of the Stipulated Guidelines Range of 0 to 6 months.

Except as provided in any written Proffer Agreement(s) that may have been entered into between these Offices and the defendant, nothing in this Agreement limits the right of the parties: (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range of 0 to 6 months (or such other range as the Court may determine) the defendant should be sentenced; and (iii) to seek an appropriately adjusted Sentencing Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. 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, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should the defendant move to withdraw her guilty plea once it is entered, or 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 Department nor the Court is bound by the above Sentencing Guidelines stipulation, either as to questions of fact or as to the determination of the proper Sentencing Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Sentencing Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the Stipulated Guidelines Range of 0 to 6 months, 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 understood that the Sentencing Guidelines are not binding on the Court. The defendant acknowledges that her 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. These Offices cannot, and do 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 her plea of guilty should the sentence imposed by the Court be outside the Stipulated Guidelines Range of 0 to 6 months.

It is agreed: (i) that the defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below the Stipulated Guidelines Range of 0 to 6 months; and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range of 0 to 6 months. It is further agreed that any sentence within the Stipulated Guidelines Range of 0 to 6 months is reasonable. This provision is binding on the parties even if the Court employs a Sentencing 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 defendant hereby acknowledges that she has accepted this Agreement and decided to plead guilty because she is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw her plea or to attack her 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.

By entering this plea of guilty, the defendant also waives any and all right the defendant may have, pursuant to 18 U.S.C. § 3600, to require DNA testing of any physical evidence in the possession of the Government. The defendant fully understands that, as a result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

It is further agreed that should the conviction(s) following the defendant's plea(s) 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 count that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may 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 also agreed that the defendant specifically waives any challenge to Count One of the Superseding Information based on venue and consents to prosecution of Count One of the Superseding Information in the Southern District of New York.

F. Hill Allen, Esq.  
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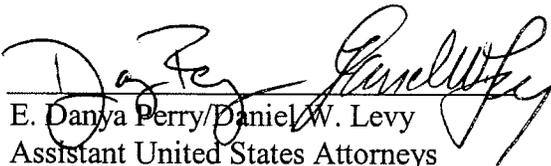
The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than these Offices.

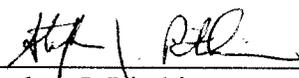
Apart from any written Proffer Agreement(s) that may have been entered into between these Offices and the defendant, this Agreement supersedes any prior understandings, promises, or conditions between these Offices and the defendant. No additional understandings, promises, or conditions have been entered 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,

MICHAEL J. GARCIA  
United States Attorney  
Southern District of New York

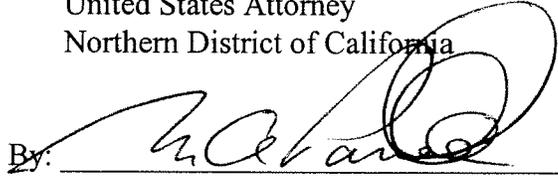
By:   
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APPROVED:

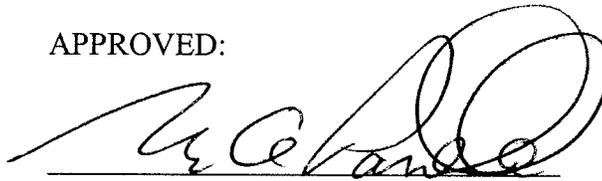
  
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Stephen J. Ritchin  
Chief, Major Crimes Unit

F. Hill Allen, Esq.  
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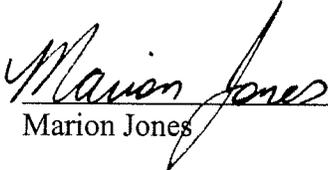
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Matthew A. Parrella  
Chief, San Jose Division  
Telephone: (408) 535-5042

AGREED AND CONSENTED TO:

  
Marion Jones

10-5-07  
Date

APPROVED:

  
F. Hill Allen, Esq.  
Tharrington Smith, LLP  
Attorneys for Marion Jones

10-5-07  
Date