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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 JAMES STEWART RICHARDS,
15 Defendant.

CASE NO. 2:10-CR-89 MCE
PLEA AGREEMENT
DATE: MAY 21, 2015
TIME: 9:00 A.M.
COURT: Hon. Morrison C. England, Jr.

16
17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The amended superseding indictment in this case charges the defendant with tax evasion, in
20 violation of 26 U.S.C. § 7201. This document contains the complete plea agreement between the United
21 States Attorney’s Office for the Eastern District of California (the “government”) and the defendant
22 regarding this case. This plea agreement is limited to the United States Attorney’s Office for the Eastern
23 District of California and cannot bind any other federal, state, or local prosecuting, administrative, or
24 regulatory authorities.

25 B. Court Not a Party.

26 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
27 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
28 concerning the criminal activities of defendant, including activities which may not have been charged in

1 the amended superseding indictment. The Court is under no obligation to accept any recommendations
2 made by the government, and the Court may in its discretion impose any sentence it deems appropriate
3 up to and including the statutory maximum stated in this plea agreement.

4 If the Court should impose any sentence up to the maximum established by the statute, the
5 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
6 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
7 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
8 receive.

9 **II. DEFENDANT'S OBLIGATIONS**

10 **A. Guilty Plea.**

11 The defendant will plead guilty to the sole count of the amended superseding indictment, tax
12 evasion under 26 U.S.C. § 7201. The defendant agrees that he is in fact guilty of these charges and that
13 the facts set forth in the Factual Basis for Plea attached hereto as Exhibit A are accurate.

14 The defendant agrees that this plea agreement will be filed with the Court and become a part of
15 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
16 plea(s) should the Court not follow the government's sentencing recommendations.

17 The defendant agrees that the statements made by him in signing this Agreement, including the
18 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
19 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
20 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
21 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
22 Agreement generally.

23 **B. Restitution.**

24 The defendant agrees to pay full restitution to the Internal Revenue Service (IRS) pursuant to 18
25 U.S.C. § 3663(a)(3), in the amount of \$519,438 – the remaining amount due and owing, including
26 penalties and interest. Restitution paid to the IRS shall be credited by the IRS against any amount which
27 defendant owed IRS, in accordance with standard IRS procedure.

28 The defendant understands that this agreement does not relieve him from any legal obligation to

1 pay additional amounts due and owing to the IRS. Defendant understands that nothing in this agreement
2 restricts the United States or the IRS from initiating any collection or civil enforcement action relating
3 thereto, nor does this agreement bar the defendant from exercising his rights in collection proceedings as
4 provided by statute and standard IRS procedure. Defendant understands that the factual basis of this
5 plea agreement binds only the United States Attorney's Office for the Eastern District of California in
6 this criminal case and does not bind any agency of the United States in any other judicial,
7 administrative, or other proceeding.

8 Restitution payments shall be by cashier's or certified check made payable to the Clerk of the
9 Court.

10 **C. Fine.**

11 The defendant agrees to pay a criminal fine if and as ordered by the Court. The defendant
12 understands that this plea agreement is voidable at the option of the government if he fails to pay the
13 stipulated fine as required by this plea agreement.

14 **D. Special Assessment.**

15 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
16 a check or money order payable to the United States District Court to the United States Probation Office
17 immediately before the sentencing hearing. The defendant understands that this plea agreement is
18 voidable at the option of the government if he fails to pay the assessment prior to that hearing.

19 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea.**

20 If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,
21 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The
22 government will no longer be bound by its representations to the defendant concerning the limits on
23 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the
24 plea agreement is to commit any crime or provide any statement or testimony which proves to be
25 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant
26 constituting obstruction of justice will also be a violation of the agreement. The determination whether
27 the defendant has violated the plea agreement will be under a probable cause standard.

28 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the

1 government shall have the right (1) to prosecute the defendant on any of the counts to which he pleaded
2 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file
3 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
4 be subject to prosecution for any federal criminal violation of which the government has knowledge,
5 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
6 options is solely in the discretion of the United States Attorney's Office.

7 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
8 defenses that the defendant might have to the government's decision. Any prosecutions that are not
9 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
10 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
11 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
12 The defendant agrees not to raise any objections based on the passage of time with respect to such
13 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
14 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
15 of the date of this plea agreement.

16 In addition, (1) all statements made by the defendant to the government or other designated law
17 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
18 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
19 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
20 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
21 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
22 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
23 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

24 **F. Asset Disclosure.**

25 The defendant agrees to make a full and complete disclosure of his assets and financial
26 condition, and will complete the United States Attorney's Office's "Authorization to Release
27 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
28 of plea. The defendant also agrees to have the Court enter an order to that effect. The defendant

1 understands that this plea agreement is voidable at the option of the government if the defendant fails to
2 complete truthfully and provide the described documentation to the United States Attorney's office
3 within the allotted time.

4 **III. THE GOVERNMENT'S OBLIGATIONS**

5 **A. Recommendations.**

6 The government will recommend a two-level reduction (if the offense level is less than 16) or a
7 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
8 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
9 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
10 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
11 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
12 preparation of the pre-sentence report or during the sentencing proceeding. The government will
13 recommend that the defendant be sentenced to the middle of the applicable guideline range as
14 determined by the Court.

15 **B. Use of Information for Sentencing.**

16 The government is free to provide full and accurate information to the Court and Probation,
17 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
18 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
19 understands and agrees that nothing in this Plea Agreement bars the government from defending on
20 appeal or collateral review any sentence that the Court may impose.

21 **IV. ELEMENTS OF THE OFFENSE**

22 At a trial, the government would have to prove beyond a reasonable doubt the following
23 elements of the offense(s) to which the defendant is pleading guilty, evasion of taxes under 26 U.S.C. §
24 7201:

25 First, the defendant owed federal income tax for the calendar years 1994 through 2003;

26 Second, the defendant knew that he owed such taxes;

27 Third, the defendant made affirmative attempts to evade payment of such taxes; and

28 Fourth, in attempting to evade payment of such taxes, the defendant acted willfully.

1 In order to prove that the defendant acted “willfully,” the government must prove beyond a
2 reasonable doubt that the defendant knew federal tax law imposed a duty on him, and the defendant
3 intentionally and voluntarily violated that duty.

4 The defendant fully understands the nature and elements of the crimes charged in the Indictment
5 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
6 his attorney.

7 **V. MAXIMUM SENTENCE**

8 **A. Maximum Penalty.**

9 The maximum sentence that the Court can impose is 5 years of incarceration, a fine of \$250,000,
10 a 3 year period of supervised release and a special assessment of \$100.

11 By signing this plea agreement, the defendant also agrees that the Court can order the payment of
12 restitution for the full loss caused by the defendant’s wrongful conduct. The defendant agrees that the
13 restitution order is not restricted to the amounts alleged in the specific count to which he is pleading
14 guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in any present
15 or future bankruptcy proceeding any restitution imposed by the Court.

16 **B. Violations of Supervised Release.**

17 The defendant understands that if he violates a condition of supervised release at any time during
18 the term of supervised release, the Court may revoke the term of supervised release and require the
19 defendant to serve up to 2 additional years imprisonment.

20 **VI. SENTENCING DETERMINATION**

21 **A. Statutory Authority.**

22 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
23 must take them into account when determining a final sentence. The defendant understands that the
24 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
25 Sentencing Guidelines and must take them into account when determining a final sentence. The
26 defendant further understands that the Court will consider whether there is a basis for departure from the
27 guideline sentencing range (either above or below the guideline sentencing range) because there exists
28 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into

1 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
2 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
3 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

4 **B. Guideline Calculation.**

5 The government and the defendant agree that there is no material dispute as to the following
6 sentencing guidelines variables and therefore stipulate to the following:

- 7 1. Base Offense Level: 20 (2T1.1, 2T4.1, tax loss of more than \$400,000)
- 8
- 9 2. Loss Amount: \$ 519,438. The parties stipulate that this is the final loss amount
10 and no further interest or penalties will accrue between now and sentencing.
- 11
- 12 3. Sophisticated Means: The parties agree to leave open for argument at sentencing
13 the potential applicability of 2T1.1(b).
- 14
- 15 4. Adjusted Offense Level: 22
- 16
- 17 5. Acceptance of Responsibility: See paragraph III.A above
- 18
- 19 6. Criminal History: I
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1 7. Departures: The parties agree that they will not seek or argue in support of any
2 other specific offense characteristics, Chapter Three adjustments (other than the decrease
3 for Acceptance of Responsibility), or cross-references. Both parties agree not to move
4 for, or argue in support of, any departure from the Sentencing Guidelines under *United*
5 *States v. Booker*, 543 U.S. 220 (2005).
6

7 8. Sentencing Range: If the Court finds that 2T1.1(b) sophisticated means applies,
8 the sentencing range is 41-51 months (without acceptance); 30 - 37 months (with
9 acceptance). If the Court finds that sophisticated means does not apply, the sentencing
10 range is 33 – 41 months (without acceptance), 24-30 months (with acceptance).
11

12 9. Departures or Other Enhancements or Reductions: The defendant is free to
13 recommend to the Court whatever sentence he believes is appropriate under 18 U.S.C. §
14 3553(a). The government agrees it will not seek an upward variance.
15

16 **VII. WAIVERS**

17 **A. Waiver of Constitutional Rights.**

18 The defendant understands that by pleading guilty he is waiving the following constitutional
19 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
20 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
21 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
22 compelled to incriminate himself.

23 **B. Waiver of Appeal and Collateral Attack.**

24 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
25 conviction, and sentence. The defendant agrees as part of his plea(s), however, to give up the right to
26 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
27 exceed the statutory maximum(s) for the offense(s) to which he is pleading guilty. The defendant
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1 specifically gives up the right to appeal any order of restitution the Court may impose.

2 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
3 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
4 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
5 understands that these circumstances occur infrequently and that in almost all cases this Agreement
6 constitutes a complete waiver of all appellate rights.

7 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
8 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
9 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

10 If the defendant ever attempts to vacate his plea, dismiss the underlying charges, or modify or set
11 aside his sentence on any of the counts to which he is pleading guilty, the government shall have the
12 rights set forth in Section II.E herein.

13 **C. Waiver of Attorneys' Fees and Costs.**

14 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
15 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
16 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
17 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
18 charges previously dismissed).

19 **D. Debarment.**

20 The defendant understands that, upon sentencing, the government will report his conviction to
21 the Department of Justice's Bureau of Justice Assistance pursuant to 10 U.S.C. § 2408 for inclusion in
22 the Defense Procurement Fraud Debarment Clearinghouse database and the System for Award
23 Management of the General Services Administration. The defendant understands that 10 U.S.C. § 2408
24 provides for a mandatory term of debarment of at least five years, which term may only be waived if the
25 Secretary of Defense determines a waiver is in the interests of national security. The defendant
26 understands that he also may be subject to the administrative action by other federal or state agencies,
27 based upon the conviction resulting from this Plea Agreement and upon grounds other than 10 U.S.C. §
28 2408, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take.

1 The defendant nevertheless affirms that he wants to plead guilty regardless of the debarment or
2 administrative action consequences of his plea. Therefore, the defendant waives any and all challenges
3 to his guilty plea and to his sentence based on the debarment or administrative action consequences of
4 his plea, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of
5 collateral attack challenging his guilty plea, conviction, or sentenced based on such consequences of his
6 guilty plea. However, the government agrees that, if requested, it will advise the appropriate officials of
7 any governmental agency considering such administrative action of the fact, manner, and extent of any
8 cooperation of the defendant as a matter for that agency to consider before determining what
9 administrative action, if any, to take.

10 **VIII. ENTIRE PLEA AGREEMENT**


11 Other than this plea agreement, no agreement, understanding, promise, or condition between the
12 government and the defendant exists, nor will such agreement, understanding, promise, or condition
13 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
14 counsel for the United States.

15 **IX. APPROVALS AND SIGNATURES**

16 **A. Defense Counsel.**

17 I have read this plea agreement and have discussed it fully with my client. The plea agreement
18 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to
19 plead guilty as set forth in this plea agreement.

20 Dated: 5/11/15


21 MICHAEL PETRIK, Jr.
22 Attorney for Defendant

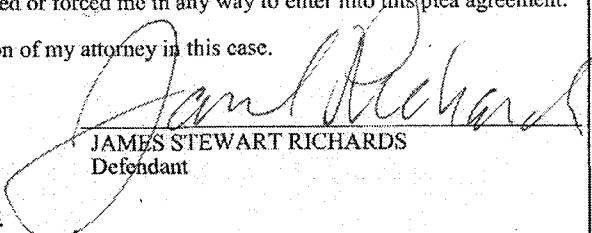
23 **B. Defendant:**

24 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
25 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully
26 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
27 case. No other promises or inducements have been made to me, other than those contained in this plea
28

1 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.

2 Finally, I am satisfied with the representation of my attorney in this case.

3 Dated: 5/10/15




JAMES STEWART RICHARDS
Defendant

4
5 C. Attorney for United States:

6 I accept and agree to this plea agreement on behalf of the government.

7
8 Dated: 5/11/15

BENJAMIN B. WAGNER
United States Attorney



AUDREY B. HEMESATH
Assistant United States Attorney

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EXHIBIT "A"

Factual Basis for Plea

James Stewart Richards is a member of the California and Hawaii bars; as a law student he took three semesters of tax courses. For the tax years 1994 through 2003, defendant Richards owed federal income taxes totaling over \$170,000, which he did not pay, as set forth in a table below.

Beginning in November 2000 and continuing through May 2005, the Internal Revenue Service ("IRS") engaged in a series of collection activities, which grew to encompass later tax years (2000 through 2003), as taxes for those years became due, owing, and unpaid. This included meetings and phone calls between IRS employees and Richards between November 30, 2000 and June 21, 2002, and in April and May 2005. This also included issuance of "Final Notice" of tax due for tax years 1993-2000, for 1998 - 2000 and 1993 - 1997, for 2001 and 2002, and 1993 through 1999 (March 30, 2005).

In 2001 and 2002, Richards made estimated tax payments totaling \$5,000, which were applied to the 2001 and 2002 tax years (\$2,000 and \$3,000, respectively). On or about May 18, 2005, an IRS employee advised Richards that his tax deficiencies, with penalties and interest, then totaled \$306,338.41. Less than 10 days later, on or about May 26, 2005, Richards made an estimated tax payment of \$4,000, which was applied to the 2005 tax year.

Tax Year	Tax Owed	Tax Paid	Remaining Owed	Total with Penalties & Interest
1994	6,639		6,639	25,124.19
1995	14,367		14,367	54,667.15
1996	18,113		18,113	63,895.67
1997	17,284		17,284	58,201.21
1998	17,044		17,044	54,630.58
1999	12,507		12,507	38,002.78
2000	25,199		25,199	71,916.81
2001	15,529	2,000	13,529	35,104.23
2002	8,970	3,000	5,970	20,804.04
2003	41,923		41,923	97,091.39
<i>Total</i>	<i>177,575</i>		<i>172,575</i>	<i>519,438</i>

From November 2000 and continuing to in or about June 2007, Richards engaged in significant activity designed to evade payment of some or all of the taxes he owed. In July 2001, Richards submitted a perjurious form to the IRS in relation to its collection efforts, in which he hid his ownership of six rental properties and two bank accounts. From October 2002 through January 2005, Richards utilized a nominee account for his own assets, including withdrawing \$100,000 in the form of a cashier's check in June 2004. When alerted by his bank that the IRS was making inquiries about the nominee account, on January 11, 2005, in order to conceal the account and assets, Richards called the bank and asked that they provide no records to the IRS and also withdrew \$100,000 from the account in the form of cashier's checks. Richards purchased a yacht for \$92,000 in July 2005 that in January 2006 he registered and titled in the name of another in order to conceal the asset. Richards further misrepresented his assets in the course of a bankruptcy proceeding at which the IRS, as one of his bankruptcy creditors, was present. From February 2002 through June 2007, Richards, as a matter of course, handled his cash assets in the form of cashier's checks. Richards undertook all of these activities willfully, that is, intentionally and voluntarily, because Richards knew he owed federal income taxes and wanted to avoid paying them.