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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. OWEN GEORGE FIORE, Defendant.	No. CR 03-0347 VRW PLEA AGREEMENT

I, Owen George Fiore, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to count four of the captioned indictment charging me with willfully attempting to evade and defeat a large part of the income taxes due and owing to the United States of America for the calendar year 1999, in violation of 26 U.S.C. § 7201. I agree that the elements of the offense and the maximum penalties are as follows: (1) the defendant has a tax due and owing; (2) the defendant attempted to evade or defeat an income tax liability; and (3) the defendant's attempt was willful.

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a.	Maximum prison sentence (26 U.S.C. § 7201)	5 years
b.	Maximum fine (18 U.S.C. §§ 3571(b)(3) and (d))	$250,000 or not more than twice the gross gain to the defendant or gross loss to the government, whichever is greater
c.	Maximum supervised release term (18 U.S.C. § 3583(b)(2)	3 years
d.	Mandatory special assessment	$100
e.	Restitution ($626,623 less $325,000 previously paid)	$301,623

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

I am an attorney licensed to practice law in the State of California and have been engaged in the practice of law since 1962. I am also a licensed certified public accountant in California. I obtained my license in 1960 and still maintain it though I do not practice as a certified public accountant. During the years 1996, 1997, 1998 and 1999 until July 1, 1999, I owned and operated The Fiore Law Group in San Jose, California. On July 1, 1999, I entered into a partnership agreement with John Ramsbacher. My law practice during 1996, 1997, 1998 and 1999 specialized in the practice of estates and trusts, family business and wealth succession, entity planning including family partnerships, and included a significant practice in tax litigation. I hold the designation of Certified Specialist in Taxation from the California Board of Legal Specialization.

For the year 1999, I prepared my own federal income tax return. On my 1999 federal income tax return, I knowingly and willfully understated the business receipts from my law practice in the total amount of $473,978. Instead of utilizing the business records and bank records of the law firm to accurately compute my business receipts for 1999, I simply estimated my business receipts full well knowing that I was understating my business receipts by a substantial amount.

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When I entered into the agreement with John Ramsbacher to operate the law practice as a partnership, it was agreed that John Ramsbacher would pay me $37,500 to buy into the law practice. John Ramsbacher, in fact, did pay the $37,500. I did not report the $37,500 on my federal income tax return for 1999. I knew that the $37,500 payment should have been reported as a capital gain by me on my federal income tax return for 1999.

Also, at the time the partnership was formed, John Ramsbacher and I agreed that certain client payments received after July 1, 1999, would be paid to me as receipts of my sole proprietorship. John Ramsbacher did pay over to me from the partnership bank account in 1999 a total of $117,933, which represented client payments due to my sole proprietorship for services rendered up through June 30, 1999. That money was deposited into my personal bank accounts. I did not report the $117,933 on my Schedule C for 1999 though I full well knew that those payments were income to me.

As a consequence of my omission of substantial amounts of business receipts and the capital gain from my law practice on my federal income tax return for the tax year 1999, I understated my taxable income and the income tax due the government as follows:

Tax Return	Taxable Income Per Return	Additional Taxable Income	Correct Taxable Income	Income Tax Per Return	Additional Income Tax	Correct Income Tax
1999	$214,828	$522,594	$737,422	$65,184	$214,420	$279,604

When I prepared, signed and filed my federal income tax return for 1999, I knew that the return was false and fraudulent in that it understated my taxable income and understated the income tax due and owing the United States.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence. I also agree to waive any right to have facts that determine my offense level under the Sentencing Guidelines, including facts that support any specific offense characteristic or other enhancement or adjustment, alleged in an

indictment and found by a jury. To the extent that I have a right to have facts that are used to determine the sentence (including any Sentencing Guideline factors, upward adjustments, or upward departures) charged in the indictment by the grand jury and found by a jury at trial beyond a reasonable doubt (see Blakely v. Washington, 124 S. Ct. 2531 (2004)), I waive those rights and agree that the Court will find the facts that enhance my sentence by a preponderance of the evidence. The waiver in this paragraph shall not affect my right to request a downward departure, as set forth in paragraph 7 below.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal my sentence.

5. I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered.

7. I agree that the Sentencing Guidelines should be calculated under U.S.S.G. §§ 2T1.1(a) and 2T4.1, and that the total tax loss for sentencing purposes is $626,623. This amount includes the tax loss for 1999, for which I am pleading guilty, and understatements of tax for 1996, 1997, and 1998, which were charged in the Indictment, but will be dismissed as a part of this Plea Agreement, but which I agree are relevant conduct within the meaning of U.S.S.G. §§ 1.B1.3 and 2T1.1 (Application Note 2) for the purposes of sentencing. The adjusted offense level under Sentencing Guidelines should be calculated as follows:

a.	Base Offense Level, U.S.S.G. § 2T4.1(M):	18
b.	Acceptance of responsibility: (If I meet the requirements of U.S.S.G. § 3E1.1)	-3
c.	Adjusted offense level	15

I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offenses or the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines

calculations above, the Court may conclude that a higher guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty plea. I reserve the right to request a downward departure from the adjusted offense level reflected above, and agree that the government shall have the right to oppose any such request.

8. I agree that the court may order and I will pay restitution in the amount of $301,623 ($626,623 less $325,000 previously paid to the Internal Revenue Service). I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate and complete financial information, submit sworn statements and give depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and release funds and property under my control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

9. I agree to comply and cooperate with the Internal Revenue Service in a good-faith effort to determine the accurate amount of, and pay any, outstanding tax liabilities, including any penalties and interest. Though I have agreed to an amount of restitution and tax loss amount as a part of the agreed-upon disposition of this case, I agree that this agreement with respect to restitution and tax loss amount does not bar the Internal Revenue Service from making a civil determination with respect to additional taxes, interest and penalties for which I may be liable, nor will it bar me from civilly contesting any liabilities as determined by the Internal Revenue Service including asserting the statute of limitations as a bar to liability.

10. I agree not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence if a sentence is imposed which requires incarceration. I also agree not to violate the terms of my pretrial release (if any); intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other promises I have made in this Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises in this agreement, including those set forth in paragraphs 13 through 15

below, but I will not be released from my guilty plea.

11. I agree that this Agreement contains all of the promises and agreements between the government and me, and I will not claim otherwise in the future.

12. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District of California only, and does not bind any other federal, state, or local agency.

The Government's Promises

13. The government agrees to move to dismiss any open charges pending against the defendant in the captioned indictment at the time of sentencing.

14. The government agrees not to file or seek any additional charges against the defendant that could be filed as a result of the investigation that led to the captioned indictment.

15. The government agrees to recommend the Guidelines calculations set out above.

The Defendant's Affirmations

16. I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

17. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

18. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

Dated: _____

_____
OWEN GEORGE FIORE
Defendant

KEVIN V. RYAN
United States Attorney

Dated: _____

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DAVID L. DENIER
Assistant United States Attorney
Attorneys for Plaintiff

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: _____

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RICHARD J. SIDEMAN
Attorney for Defendant