

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI

<b>UNITED STATES OF AMERICA</b>	:	Case No. 1:09-CR-026
	:	
<b>vs.</b>	:	<b>REVISED</b>
	:	<b>PLEA AGREEMENT</b>
<b>JOSEPH A. RUSCIGNO</b>	:	
	:	
	:	
	:	

It is hereby agreed between **JOSEPH A. RUSCIGNO** (hereafter, “defendant”), individually and through his attorney, Patrick J. Hanley, and the United States Attorney’s Office for the Southern District of Ohio (hereafter, “USAO”) (collectively, “the parties”), as follows:

1. Defendant agrees to plead guilty to a Bill of Information containing a single count of Corruptly Endeavoring to Obstruct or Impede the Due Administration of the Internal Revenue Laws (the Omnibus Clause) in violation of 26 U.S.C. § 7212(a). The statutory maximum penalties for a violation of Title 26, United States Code, Section 7212(a) are: up to three years in prison, up to one year of supervised release, a fine of up to \$250,000.00, and a mandatory special assessment of \$100.00. Defendant admits that he is, in fact, guilty of the charged offense, and that the attached Statement of Facts, which is incorporated herein by this reference, is true and correct. By admitting these facts, the defendant stipulates and admits that had this case proceeded to trial the United States would have been able to prove each element of the offense beyond a reasonable doubt.

2. (a) Defendant understands that the U.S. Probation Office (“Probation Office”) will conduct a pre-sentence investigation and will recommend to the Court an advisory Sentencing Guidelines range, including, among other matters as applicable, a Base Offense Level, specific offense characteristics, adjustments, and any departures. For the purpose of calculating an advisory Sentencing Guidelines range, the parties have made only the agreements discussed in paragraph 2(b) below which they will mutually recommend to the Probation Office and the Court. However, defendant understands that the Court will make the determination of all the various aspects of the Sentencing Guidelines and whether or not it will accept all or some of the recommendations of the parties. The parties reserve the right to argue that other specific offense characteristics, adjustments and departures are appropriate, so long as these arguments do not conflict with the agreements in paragraph 2(b) below. Defendant understands that the Probation Office’s recommendations are not binding on the Court, and that any agreements or recommendations made by the parties are not binding on the Court or the Probation Office. Defendant further understands that the Sentencing Guidelines range is an advisory range to be considered by the Court along with other appropriate sentencing factors as noted in 18 U.S.C. § 3553(a). Defendant understands that the Court alone will determine an appropriate sentence, which may or may not be consistent with any agreements or recommendations of the parties. Defendant understands that if the Court does not follow any agreements or recommendations made by the parties, he does not have the right to withdraw his plea of guilty. Defendant understands and acknowledges that he could receive up to the maximum penalties provided by law if the Court so determines.

(b) The parties make the following non-binding Guideline recommendations pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. The parties believe that the most appropriate Guideline for the offense of conviction is U.S.S.G. § 2T1.1. The parties agree there is no tax loss. The parties recommend that the defendant be given the acceptance of responsibility downward adjustment of U.S.S.G. § 3E1.1(a) if he continues to accept responsibility through the time of sentencing. The parties make no recommendation to the Court concerning his criminal history. If the Court decides that a Guideline other than U.S.S.G. § 2T1.1 is more appropriate for the offense of conviction, the defendant understands that he will not be allowed to withdraw his guilty plea.

**DEFENDANT'S OBLIGATIONS**

3. In addition to entering the guilty plea as discussed in Paragraph 1 and making the recommendations in Paragraph 2(b) above, defendant agrees that he will pay to the United States Clerk of Court, prior to or at the time of sentencing, the mandatory special assessment in the total amount of \$100.00.

4. Defendant further agrees that in the event he does not plead guilty or seeks to withdraw his guilty plea, or the guilty plea is set aside for any other reason, defendant waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, and § 1B1.8(a) of the United States Sentencing Guidelines Manual. Any statements made by defendant in the course of plea discussions, in any proceeding under Rule 11 of the Federal Rules of Criminal Procedure, and during any cooperation with law enforcement authorities, will be admissible against defendant without limitation in any civil or criminal proceeding.

5. The defendant is aware that Title 18, United States Code § 3742 affords a right to appeal the sentence in certain circumstances. Acknowledging this, the defendant waives his right to directly appeal his sentence and all other issues that he can legally waive. If the United States would exercise its right to appeal, the defendant is released from this waiver of appeal.

**THE USAO'S OBLIGATIONS**

6. If defendant complies fully with all of his obligations under this Plea Agreement, the USAO agrees:

a) To not file additional criminal tax charges against defendant for violations occurring in the Southern District of Ohio arising out of the facts set forth in the attached Statement of Facts and for his individual federal tax obligations through tax year 2007. Additionally, pursuant to U.S.S.G. § 1B1.8, the United States Attorney's Office will not charge the defendant for any offense that he has truthfully and completely disclosed relating to the cooperation responsibility described below.

b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility up to and including the time of sentencing and otherwise fulfills his obligations as stated in this Plea Agreement, to make the Guideline recommendations as noted above in paragraph 2(b).

**OBLIGATIONS OF THE PARTIES REGARDING COOPERATION**

7. The defendant will give complete cooperation to law enforcement authorities and others regarding his activities and those of others in relation to the offense charged in the Information and all other criminal activity of which he is aware. Pursuant to his cooperation agreement the following terms and conditions apply:

(a) **JOSEPH A. RUSCIGNO** shall cooperate fully, truthfully, completely and forthrightly with the United States Attorney's Office for the Southern District of Ohio and other Federal, state and local law enforcement authorities identified by this Office in any and all matters as to which the Government deems the cooperation relevant. **JOSEPH A. RUSCIGNO** acknowledges that his cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written statements; taking government administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by **JOSEPH A. RUSCIGNO** to cooperate fully, truthfully, completely and forthrightly as directed by this Office and other Federal, state and local law enforcement authorities identified by this Office in any and all matters in which the Government deems his assistance relevant will constitute a breach of this agreement by **JOSEPH A. RUSCIGNO** and will relieve the Government of its obligations under this agreement. **JOSEPH A. RUSCIGNO** agrees, however, that such breach by him will not constitute a basis for withdrawal of his plea of guilty or otherwise relieve him of his obligations under this agreement.

(b) **JOSEPH A. RUSCIGNO** shall promptly turn over to the Government or other law enforcement authorities or direct such law enforcement authorities to any and all evidence of crime; all contraband and proceeds of crime; and all assets traceable to such proceeds of crime.

(c) **JOSEPH A. RUSCIGNO** shall testify fully, completely and truthfully before any and all Grand Jury(ies) in the Southern District of Ohio, and elsewhere, and at any and all trials of cases or other court proceedings in the Southern District of Ohio and elsewhere, at which his testimony may be deemed relevant by the Government.

(d) **JOSEPH A. RUSCIGNO** understands and acknowledges that nothing in this agreement allows him to commit any criminal violation of local, state or federal law during the period of his cooperation with law enforcement authorities or at any time prior to the sentencing in this case. The commission of a criminal offense during the period of **JOSEPH A. RUSCIGNO'S** cooperation or at any time prior to sentencing will constitute a breach of this Plea Agreement and will relieve the Government of all of its obligations under this agreement. **JOSEPH A. RUSCIGNO** acknowledges, however, and agrees that such a breach of this agreement will not entitle him to withdraw his plea of guilty or relieve him of his obligations under this agreement. **JOSEPH A. RUSCIGNO** further understands that, to establish a breach of this agreement, the Government need only prove his commission of a criminal offense by a preponderance of the evidence.

(e) Upon request, **JOSEPH A. RUSCIGNO** will provide a complete and truthful financial accounting to the United States of his assets and liabilities. **JOSEPH A. RUSCIGNO** will cooperate fully with the Internal Revenue Service (IRS) to resolve any civil liability he may have relating to the accurate reporting of gambling winnings and losses for all applicable tax years for his personal income taxes. He will provide the IRS Examination Division all requested documents and information if they pursue a civil audit of his taxes. The defendant agrees to amend prior personal tax returns if necessary. Defendant will cooperate fully with the IRS in paying his past due tax obligations connected with Fitch Reporting, Inc. The defendant understands that nothing in this agreement in any way limits the IRS in its collection of any taxes, penalties, or interest due from the defendant.

(f) If the defendant fully and truthfully cooperates as described in this Plea Agreement and the United States Attorney determines that such cooperation amounts to “substantial assistance,” the United States will file a motion for a substantial assistance downward departure. The defendant agrees to and understands the following: That only the United States Attorney, in his sole discretion, may apply for a downward departure from the Guideline sentence pursuant to Sentencing Guideline § 5K.1 and that only the United States Attorney may, within one year of sentencing and at the sole discretion of the United States Attorney, file a motion for reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, to reflect substantial assistance to the United States subsequent to sentencing. The defendant understands that the determination of whether he has provided substantial assistance for purposes of § 5K1.1 is not reviewable by this Court. The defendant agrees and acknowledges that if this Office chooses not to file a substantial assistance departure motion it shall not be grounds for the defendant to move to withdraw his plea of guilty in this case or otherwise relieve him of his obligations under this agreement. The United States acknowledges that as of the time of the signing of this Plea Agreement the defendant has taken substantial steps towards his cooperation requirements.

**WAIVER OF RIGHTS**

8. By pleading guilty, defendant has been advised of and understands that he gives up the following rights:

- a) The right to persist in pleas of not guilty.
- b) The right to a speedy and public trial by jury.

c) The right to the assistance of counsel at trial, including, if defendant could not afford an attorney, the right to have the Court appoint one for him.

d) The right to be presumed innocent and to have the burden of proof placed on the Government to prove him guilty beyond a reasonable doubt.

e) The right to confront and cross-examine witnesses against him.

f) The right, if he chooses, to testify on his own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

g) The right not to be compelled to testify, and, if he chooses, not to testify or present evidence, to have that choice not be used against him.

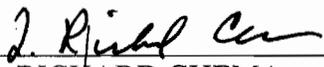
By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

**DISCUSSION, UNDERSTANDING, COMPLETE AGREEMENT**

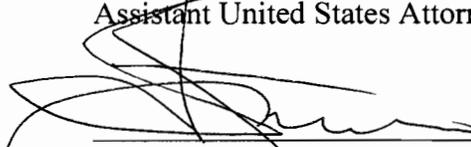
9. By signing this Plea Agreement, defendant acknowledges that he has read and discussed its terms with his attorney and understands and accepts those terms. Further, defendant acknowledges that this document contains the entire Plea Agreement between the defendant and the USAO through its undersigned attorney. No other agreements, promises, deals, bargains or understandings exist which modify or alter these terms. This Plea Agreement binds only the United

States Attorney's Office for the Southern District of Ohio and does not bind any other federal, state or local prosecuting authority.

GREGORY G. LOCKHART  
United States Attorney

  
\_\_\_\_\_  
J. RICHARD CHEMA  
Assistant United States Attorney

4/29/09  
Date

  
\_\_\_\_\_  
JOSEPH A. RUSCIGNO  
Defendant

4/29/09  
Date

  
\_\_\_\_\_  
PATRICK J. HANLEY  
Attorney for defendant JOSEPH A. RUSCIGNO

4-29-09  
Date

**STATEMENT OF FACTS**

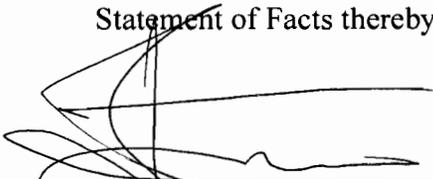
**JOSEPH A. RUSCIGNO**, along with another individual, was an owner of a business known as Fitch Reporting, Inc. This business had failed to pay federal taxes due and owing to the United States. In or about June 2007, **JOSEPH A. RUSCIGNO** agreed, along with another individual, to make weekly payments of approximately \$1,500.00 to the Internal Revenue Service to satisfy the past due tax obligation owed by Fitch Reporting, Inc., and **JOSEPH A. RUSCIGNO** to the United States.

In an effort to reduce the weekly payments owed to the United States for the past due tax obligation, the other individual, with the concurrence of **JOSEPH A. RUSCIGNO**, sought a downward adjustment of the agreed upon payment schedule. To support the requested downward adjustment **JOSEPH A. RUSCIGNO** created or caused to be created a false profit and loss statement for the period January 2007 through September 2007. **JOSEPH A. RUSCIGNO** intentionally caused the report of various business expenses to be falsely increased without regard to the actual payment of said expenses by Fitch Reporting, Inc. By doing this, the purported income/profit to Fitch Reporting, Inc., was decreased.

In an endeavor to corruptly obstruct and impede the due administration of the Internal Revenue laws for collecting the past due tax obligation of Fitch Reporting, Inc., **JOSEPH A. RUSCIGNO** knowingly submitted or caused to be submitted the false Profit and Loss Statement to an employee of the United States Internal Revenue Service. The actions of **JOSEPH A. RUSCIGNO** in endeavoring to obstruct or impede the due administration of the Internal Revenue laws occurred in the Southern District of Ohio during the period from September 2007 through on or about October 7, 2007 when the false Profit and Loss Statement was submitted to an Internal

Revenue Service employee in Cincinnati, Ohio.

I have reviewed the above statement of facts with my attorney. I agree to the accuracy of the Statement of Facts thereby acknowledging their truth and my guilt.

  
\_\_\_\_\_  
JOSEPH A. RUSCIGNO  
Defendant

4/29/09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
PATRICK J. HANLEY  
Attorney for defendant JOSEPH A. RUSCIGNO

4-29-09  
\_\_\_\_\_  
Date