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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 UNITED STATES OF AMERICA,)	Nos. CR-00-40124-DLJ
13)	CR-01-40010-DLJ
14 Plaintiff,)	
15 v.)	PLEA AGREEMENT
16 JOSEPH M. PALOMBA,)	
17 Defendant.)	

18 I, Joseph M. Palomba, and the United States Attorney's Office for the Northern District of
19 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
20 pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure:

21 The Defendant's Promises

22 1. I agree to plead guilty to Count One of the CR-01-40010-DLJ captioned
23 indictment charging me with mail fraud in violation of 18 U.S.C. § 1341. I agree that the
24 elements of the offense and the maximum penalties are as follows: (1) defendant devised or
25 intended to devise a scheme to defraud; (2) defendant used the mail for the purpose of executing,
26 or attempting to execute, the scheme; and (3) defendant did so with the intent to deceive or
27 defraud.

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- 1 a. Maximum prison sentence 5 years
2 b. Maximum fine \$250,000
3 c. Maximum supervised release term 3 years
4 d. Mandatory special assessment \$100.00

5 2. I agree that I am guilty of mail fraud in violation of 18 U.S.C. § 1341 to which I
6 will plead guilty, and I agree that the following facts are true:

7 A. I am a resident of Alameda County, California.

8 B. Beginning in or around 1998, I devised a scheme to defraud individuals by falsely
9 claiming that Aldesa Brokerage Group, Inc. ("Aldesa"), would invest their money for them in
10 foreign countries, including Costa Rica.

11 C. During 1999 and 2000, in Oakland, California, I controlled Aldesa which falsely
12 held itself out to be a registrar and transfer agent for domestic investors in international financial
13 instruments.

14 D. Pursuant to my scheme I caused Aldesa to place advertisements in various
15 publications including in the Classified Flea Market, The Daily Review, Oakland Tribune,
16 Alameda Times, Tri Valley Herald, and the San Mateo County Times. Among other things those
17 advertisements sought investors, allegedly to invest in Costa Rican bank certificates of deposit
18 with high rates of return and falsely claimed that Aldesa had made investments for individuals in
19 Costa Rica since 1971, Brazil since 1988, and the Philippines since 1981.

20 E. As a result of the false newspaper advertisements and false and misleading letters
21 and materials sent during 1998, 1999 and 2000 to persons responding to those advertisements, I
22 received more than \$200,000 from 12-13 investors to invest their money in Costa Rican bank
23 certificates of deposit, but I did not invest their money as I promised them.

24 F. Instead of investing their money in certificates of deposit, I used the money for my
25 personal expenses and to repay other investors.

26 G. As a part of my scheme, I sent the investors fraudulent account statements through
27 the U.S. mail showing their account balances increasing substantially over time, although I never
28 invested their money.

1 II. On or about January 19, 2000, for the purpose of executing my scheme to defraud
2 and in attempting to do so, I knowingly caused Federal Express to deliver a letter to Farrell Sun
3 at 2800 Santa Clara Street, Richmond, Ca. 94804-5928. In that letter I falsely claimed to be a
4 CLU (Certified Life Underwriter) and a ChFC (Chartered Financial Consultant).

5 3. I also agree to plead guilty to Count Forty of the CR-00-40124-DLJ captioned
6 indictment charging me with filing a false claim in violation of 18 U.S.C. § 287. I agree that the
7 elements of the offense and the maximum penalties are as follows: (1) that the defendant
8 presented a claim against the United States or any agency of the United States; (2) that the claim
9 was false, fictitious, or fraudulent; and (3) that the defendant knew the claim was false, fictitious,
10 or fraudulent.

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|----|----|---------------------------------|-----------|
| 11 | a. | Maximum prison sentence | 5 years |
| 12 | b. | Maximum fine | \$250,000 |
| 13 | c. | Maximum supervised release term | 3 years |
| 14 | d. | Mandatory special assessment | \$100.00 |

15 4. I agree that I am guilty of filing false claims in violation of 18 U.S.C. § 287 to
16 which I will plead guilty, and I agree that the following facts are true:

17 A. That on or about January 15, 2000, I prepared a false Form 1040EZ for the 1999
18 tax year ~~1999~~ ¹⁹⁹⁹ in the name of another person and I used his Social Security Number on that return.

19 B. On that false Form 1040EZ, I falsely and knowingly claimed an income tax
20 refund and directed the Internal Revenue Service to deposit the refund into a bank account
21 controlled by me.

22 C. On or about January 15, 2000, I mailed that false Form 1040EZ to the Internal
23 Revenue Service.

24 5. I agree to give up all rights that I would have if I chose to proceed to trial,
25 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
26 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
27 any other Fourth or Fifth Amendment claims; to any further discovery from the government, as
28 may be limited by United States v. Ruiz, 241 F.3d 1157 (9th Cir. 2001); and to pursue any

1 affirmative defenses and present evidence.

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

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

7 8. I agree not to ask the Court to withdraw my guilty plea at any time after it is
8 entered, unless the Court declines to sentence me in accordance with the calculations set forth
9 below in paragraphs 9 and 10, at which time I can withdraw my plea pursuant to Federal Rule of
10 Criminal Procedure 11(e)(1)(C). I agree that the government may withdraw from this agreement
11 if the Court does not accept the agreed upon sentencing calculations set out below.

12 9. I agree that the Sentencing Guidelines, using the mail fraud count as the major
13 count, should be calculated as follows, and that I will not ask for any other adjustments to or
14 reductions of the offense level:

15	a.	Base Offense Level, U.S.S.G. § 2F1.1(a):	6
16	b.	Amount of loss: mail fraud-\$266,000; false claims-\$403,975.88	
17	c.	Specific Offense Characteristics, 2F1.1:(b)(1), (b)(2) and (b)(3):	12
18	d.	Combined Offense Level, 3D1.4:	2
19	e.	Acceptance of responsibility:	- 3
20	f.	Combined adjusted offense level	17

21 10. I agree that an appropriate disposition of this case is as follows: Sentencing
22 Guideline level 17; Criminal History category II; 3 years of supervised release (with conditions to
23 be fixed by the Court), \$5,000 to \$50,000 fine unless the defendant meets the requirements of
24 U.S.S.G. §5E1.2(a), and \$100 special assessment. The parties have not reached any agreement
25 on the amount of restitution, if any, to be paid. However, I agree that I will make a good faith
26 effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I
27 will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate
28 and complete financial information, submit sworn statements and give depositions under oath

1 concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes,
2 and release funds and property under my control in order to pay any fine, forfeiture, or restitution.
3 I agree to pay the special assessment at the time of sentencing.

4 11. I agree not to commit or attempt to commit any crimes before sentence is imposed
5 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
6 release (if any); intentionally provide false information to the Court, the Probation Office,
7 Pretrial Services, or the government; or fail to comply with any of the other promises I have
8 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this
9 Agreement, then the government will be released from all of its promises below, but I will not be
10 released from my guilty plea, except pursuant to paragraph 8 herein.

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

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

15 The Government's Promises

16 14. The government agrees to move to dismiss any open charges pending against the
17 defendant in the captioned indictments at the time of sentencing.

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

20 16. The government agrees to recommend the Guidelines calculations set out above
21 and agrees that, pursuant to Federal Rule of Criminal Procedure 11(e)(1)(C), the defendant can
22 withdraw his plea if the Court does not impose a sentence in accordance with the calculations set
23 forth above in paragraphs 9 and 10.

24 The Defendant's Affirmations

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

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18. 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.

19. 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: 10/24/01

Joseph M. Palomba
JOSEPH M. PALOMBA
Defendant

DAVID W. SHAPIRO
United States Attorney

Dated: 10/26/01

Thomas Moore
THOMAS MOORE
Assistant United States Attorney

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: 10/26/01

William P. Keane
WILLIAM P. KEANE
Attorney for Defendant