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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ERIC WITMEYER,

16 Defendant.
17

CR-02-0403-SI

PLEA AGREEMENT

18 I, Eric Witmeyer, 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, pursuant to Rule 11(e)(1)(C) of the Federal Rules of
23 Criminal Procedure, to Count One of the Indictment charging me with conspiracy to defraud the
24 United States, in violation of 18 U.S.C. § 371. I agree that Count One to which I am pleading
25 guilty alleges as follows:

26 a. That beginning sometime prior to April 1994, I conspired with Jerome
27 Schneider (hereafter "Schneider") to defraud the United States by attempting to defeat and
28 obstruct the lawful functions of the Internal Revenue Service in the ascertainment, computation,

1 assessment and collection of income taxes owed by U.S. taxpayers. The substance of the
2 conspiracy was that Schneider would sell to U.S. taxpayer investors offshore entities such as
3 those licensed by the Island of Nauru, as international banks and other offshore corporations, so
4 that such U.S. taxpayers could use the offshore entities to avoid federal income taxes owed on
5 funds the U.S. taxpayers would cause to be transferred to bank or brokerage accounts held in the
6 name of the offshore entities in a financial institution located outside the United States. I would,
7 at Schneider's direction and request, serve as counsel to the U.S. taxpayers and prepare so-called
8 decontrol documents to conceal their ownership and control over any funds or assets transferred
9 by or at the direction of the U.S. taxpayers to bank or brokerage accounts held in the name of the
10 offshore entities.

11 b. That I became a member of the conspiracy with Schneider knowing of at
12 least one of its objects and intending to help accomplish it; and

13 c. That I and/or Schneider performed at least one overt act as listed in
14 paragraphs 32 through 60 of the Indictment for the purpose of carrying out the conspiracy.

15 2. I agree that the maximum penalties for a violation for 18 U.S.C. § 371 are:

- | | | |
|-------|---------------------------------|-----------|
| 16 a. | Maximum prison sentence | 5 years |
| 17 b. | Maximum fine | \$250,000 |
| 18 c. | Maximum supervised release term | 3 years |
| 19 d. | Mandatory special assessment | \$100.00 |

20 3. I acknowledge and admit that I am guilty of the offense charged in Count One to
21 which I agree to plead guilty. I acknowledge and admit that I and Jerome Schneider conspired to
22 defraud the United States and to attempt to defeat and obstruct the lawful functions of the
23 Internal Revenue Service in its ascertainment, computation, assessment and collection of income
24 taxes owed by U.S. taxpayers. I agree that the following facts are true:

25 a. Schneider marketed and sold to U.S. taxpayer investors offshore entities
26 such as those licensed by the Island of Nauru as international banks and other offshore
27 corporations. Schneider represented to U.S. taxpayers that by means of their ownership of the
28

1 offshore entities, and so-called decontrol documents to be prepared by me, or other counsel, the
2 U.S. taxpayers could conceal from the Internal Revenue Service, their ownership and control of
3 funds or assets they caused to be deposited into bank or brokerage accounts held in the name of
4 the offshore banks in financial institutions located outside the United States.

5
6 b. I, at Schneider's direction and request, based upon form documents
7 supplied to me by Schneider, agreed to act as counsel for the U.S. taxpayer and prepare the so-
8 called decontrol documents for the U.S. taxpayers who purchased an offshore entity from
9 Schneider.

10
11 c. The decontrol process included transferring the U.S. taxpayer's interest in
12 the offshore entity to a so-called Independent Foreign Owner (IFO) in exchange for a promissory
13 note in an amount large enough to make it appear as if there was bona fide and negotiated sale of
14 the offshore entity to the IFO. The amount of the promissory note was not the result of
15 negotiations between U.S. taxpayers and the IFO. Rather, it was an amount set by me and/or
16 Jerome Schneider in discussions with the U.S. taxpayers.

17
18 d. Jerome Schneider selected the IFO for the U.S. taxpayers and despite the
19 purported decontrol of the offshore entity, I understood that the U.S. taxpayers in fact owned and
20 controlled the offshore entity and any accounts opened up in the name of the offshore entity in
21 any financial institution located outside the United States.

22
23 e. In or about September 1999, I met with two individuals whom I
24 understood were clients of Schneider and were considering purchasing an offshore entity with
25 Schneider's assistance. I counseled these individuals as to how they could and should tailor their
26 use of the offshore entities to evade the detection of the Internal Revenue Service, and generally
27 how they could conceal funds they might transfer to any offshore accounts held in the names
28

1 of the entities from the Internal Revenue Service. I understood at the time that these two
2 individuals intended to use the offshore entities they were considering purchasing, and the so-
3 called decontrol documents they were considering hiring me to prepare, in order to conceal their
4 ownership and control of funds and assets from the Internal Revenue Service, and thereby
5 to evade the payment of income taxes.
6

7 f. We used financial institutions and entities located outside the United
8 States to conceal the activities of the offshore entities from the Internal Revenue Service.
9

10 4. This plea is entered into pursuant to Rule 11(e)(1)(C) of Federal Rule of Criminal
11 Procedure. If the Court accepts the sentence agreed upon by the parties, then I agree to give up
12 all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with
13 the assistance of an attorney; to confront and cross-examine government witnesses; to remain
14 silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment
15 claims; to any further discovery from the government; and to pursue any affirmative defenses and
16 present evidence. I agree to give up my right to appeal my conviction, the judgment, and orders
17 of the Court. I also agree to waive any right I may have to appeal my sentence.
18

19 5. I agree not to file any collateral attack on my conviction or sentence, including a
20 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim
21 that my constitutional right to the effective assistance of counsel was violated
22

23 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
24 entered, unless the Court declines to accept the sentence agreed by the parties. I agree that the
25 government may withdraw from the agreement if the Court does not accept the agreed upon
26 sentence set out below.
27
28

1 7. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution
2 I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the
3 government, or the U.S. Probation Office, provide accurate and complete financial information,
4 submit sworn statements and give depositions under oath concerning my assets and my ability to
5 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my
6 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at
7 the time of sentencing.
8

9 8. I agree to cooperate with the U.S. Attorney's Office before and after I am
10 sentenced. My cooperation will include, but will not be limited to, the following:
11

12 a. I will respond truthfully and completely to any and all questions put to me,
13 whether in interviews, before a grand jury or at any trial or other proceeding, consistent with the
14 attorney client privilege and as the Court may order;
15

16 b. I will provide all documents and other material asked for by the
17 government, consistent with the attorney client privilege and as the Court may order;
18

19 c. I will testify truthfully at any grand jury, court or other proceeding as
20 requested by the government, consistent with the attorney client privilege and as the Court may
21 order;
22

23 d. I will surrender any and all assets acquired or obtained directly or
24 indirectly as a result of my illegal conduct;
25

26 e. I will request continuances of my sentencing date, as necessary, until my
27 cooperation is completed;
28

1 f. I will tell the government about any contacts I may have with any
2 co-defendants or subjects of investigation, or their attorneys or individuals employed by their
3 attorneys;
4

5 g. I will not reveal my cooperation, or any information related to it, to anyone
6 without prior consent of the government;

7 9. I agree that the government's decision whether to file a motion pursuant to USSG
8 §5K1.1, as described in the government promises section below, is based on its sole and
9 exclusive decision of whether I have provided substantial assistance and that decision will be
10 binding on me. I understand that the government's decision whether to file such a motion, or the
11 extent of the departure recommended by any motion, will not depend on whether convictions are
12 obtained in any case. I also understand that the Court will not be bound by any recommendation
13 made by the government. I understand that I will not entitle to withdraw my plea if the
14 government decide not to file a motion for downward departure.
15
16

17 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
18 or before I surrender to serve my sentence; violate the terms of my pretrial release (if any);
19 intentionally provide false information or testimony to the Court, the Probation Office, Pretrial
20 Services; or the government; or fail to comply with any of the other promises I have made in this
21 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,
22 then the government will be released from all of its promises, but I will not be released from my
23 guilty plea.
24
25

26 11. I understand and agree that my sentence should be calculated pursuant to the
27 applicable Sentencing Guidelines as follows:
28

- 1 a. The applicable Guideline section is Section 2T1.9. Conspiracy to Impede,
2 Impair, Obstruct, or Defeat Tax.
- 3 b. The base offense level pursuant to U.S.S.G. Section 2T1.9.(a)(2) is 10.
- 4 c. Pursuant to Section 2T1.9.(b)(2) because the offense conduct was intended
5 to impede, impair, obstruct, or defeat the ascertainment, computation, assessment, or collection
6 of revenue, the offense level is increased 2 levels.
- 7 d. Pursuant to Section 3E1.1(a) because I have demonstrated acceptance of
8 responsibility for his offense, the offense level is decreased 2 levels.
- 9 e. Absent a downward departure, the appropriate offense level pursuant to
10 the Sentencing Guidelines is 10.
- 11 f. My Criminal History Category is Category I.
- 12 g. The Sentencing Table provides that for a level 10 offense, for a Category I
13 offender, the guideline range is 6 to 12 months.
- 14 h. Pursuant to Section 5B1.1(a)(2), at this level, a sentence of probation is
15 authorized if the Court imposes a condition or combination of conditions requiring intermittent
16 confinement, community confinement, or home detention.
- 17 i. Pursuant to Section 5B1.2, the term of probation shall be from one to five
18 years because the offense level is 6 or greater.
- 19 j. Pursuant to Section 5B1.3, certain conditions of probation are mandatory.
- 20 k. Pursuant to Section 5D1.1(a), a period of supervised release is not
21 required.
- 22 l. Pursuant to Section 5E1.1, restitution is not required.
- 23
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1 m. Pursuant to Section 5E1.2, a fine of no less than \$2,000 and no more than
2 \$20,000 is required.

3 n. Pursuant to Section 5E1.3, a special assessment of \$100 is required.

4 o. Pursuant to Section 5E1.4, forfeiture is to be imposed as provided by
5 statute.
6

7 12. Witmeyer and the government agree, absent a request for a downward departure,
8 to recommend to the Court that Witmeyer be sentenced as follows:

9 (a) Probation of one year, including six months of home detention during
10 which time Witmeyer will be required to be in his place of residence at all times except for
11 absences for gainful employment, community service, religious services, medical care, travel for
12 such purposes, and when otherwise specifically approved by his probation officer.
13

14 b. Probation to include all conditions that are mandatory pursuant to Section
15 5B1.3.
16

17 c. A fine of \$10,000.

18 d. A special assessment of \$100.

19 e. No order of forfeiture.

20 f. No other terms or conditions.
21

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

24 14. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
25 District of California only, and does not bind any other federal, state, or local agency.
26

27 The Government's Promises

28 15. The government agrees not to file or seek any additional charges against the

1 defendant that could be filed as a result of the investigation and to dismiss Count 2 through 23 of
2 the Indictment.

3 16. The government agrees not to use any statements made by the defendant pursuant
4 to this Agreement against him, unless the defendant fails to comply with any promises in this
5 agreement.
6

7 17. The U.S. agrees to the sentencing guidelines calculations and sentence as
8 described in par. 11 and 12 above.
9

10 18. If, in its sole and exclusive judgment, the government decides that the defendant
11 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities
12 within the meaning of U.S.S.G. §5K1.1, and otherwise complied fully with this Agreement, it
13 will file with the Court a motion under §5K1.1 and/or 18 U.S.C. §3553 that explains the nature
14 and extent of the defendant's cooperation and recommends a downward departure.
15

16 The Defendant's Affirmations

17 19. I confirm that I have had adequate time to discuss this case, the evidence, and this
18 Agreement with my attorney, and that he has provided me with all the legal advice that I
19 requested.
20

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

23 21. I confirm that my decision to enter a guilty plea is made knowing the charges that
24 have been brought against me, any possible defenses, and the benefits and possible detriments of
25 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
26 one coerced or threatened me to enter into this agreement.
27
28

1 Dated: 1/16/03



ERIC WITMEYER
Defendant

KEVIN V. RYAN
United States Attorney

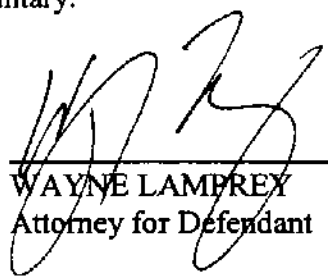
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5 Dated: 1/16/03



JAY R. WEILL
Assistant United States Attorney

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

12
13
14 Dated: 1/16/03



WAYNE LAMPREY
Attorney for Defendant