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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 OWEN GEORGE FIORE,

16 Defendant.  
17 \_\_\_\_\_

No. CR 03-0347 VRW

PLEA AGREEMENT

18 I, Owen George Fiore, 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 Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

21 The Defendant's Promises

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

28 ///

PLEA AGREEMENT  
CR 03-0347 VRW

- 1           a.     Maximum prison sentence                   5 years  
2                   (26 U.S.C. § 7201)  
3           b.     Maximum fine                                 \$250,000 or not more than  
4                   (18 U.S.C. §§ 3571(b)(3) and (d))       twice the gross gain to the  
5                                                                         defendant or gross loss to the  
6                                                                         government, whichever is  
7                                                                         greater  
8           c.     Maximum supervised release term         3 years  
9                   (18 U.S.C. § 3583(b)(2))  
10          d.     Mandatory special assessment             \$100  
11          e.     Restitution                                 \$301,623  
12                   (\$626,623 less \$325,000 previously paid)

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

15                 I am an attorney licensed to practice law in the State of California and have been engaged  
16                   in the practice of law since 1962. I am also a licensed certified public accountant in California. I  
17                   obtained my license in 1960 and still maintain it though I do not practice as a certified public  
18                   accountant. During the years 1996, 1997, 1998 and 1999 until July 1, 1999, I owned and  
19                   operated The Fiore Law Group in San Jose, California. On July 1, 1999, I entered into a  
20                   partnership agreement with John Ramsbacher. My law practice during 1996, 1997, 1998 and  
21                   1999 specialized in the practice of estates and trusts, family business and wealth succession,  
22                   entity planning including family partnerships, and included a significant practice in tax litigation.  
23                   I hold the designation of Certified Specialist in Taxation from the California Board of Legal  
24                   Specialization.

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

31                 ///

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

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

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

|    |                |                   |                |                |                   |                |           |
|----|----------------|-------------------|----------------|----------------|-------------------|----------------|-----------|
| 16 | <u>Taxable</u> | <u>Additional</u> | <u>Correct</u> | <u>Income</u>  | <u>Additional</u> | <u>Correct</u> |           |
| 17 | <u>Return</u>  | <u>Income</u>     | <u>Taxable</u> | <u>Tax Per</u> | <u>Income</u>     | <u>Income</u>  |           |
|    |                | <u>Per Return</u> | <u>Income</u>  | <u>Return</u>  | <u>Tax</u>        | <u>Tax</u>     |           |
| 18 | 1999           | \$214,828         | \$522,594      | \$737,422      | \$65,184          | \$214,420      | \$279,604 |

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

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

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

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

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

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

15 7. I agree that the Sentencing Guidelines should be calculated under U.S.S.G. §§  
16 2T1.1(a) and 2T4.1, and that the total tax loss for sentencing purposes is \$626,623. This amount  
17 includes the tax loss for 1999, for which I am pleading guilty, and understatements of tax for  
18 1996, 1997, and 1998, which were charged in the Indictment, but will be dismissed as a part of  
19 this Plea Agreement, but which I agree are relevant conduct within the meaning of U.S.S.G. §§  
20 1.B1.3 and 2T1.1 (Application Note 2) for the purposes of sentencing. The adjusted offense  
21 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:<br>(If I meet the requirements of<br>U.S.S.G. § 3E1.1) | <u>-3</u> |
| c. | Adjusted offense level                                                               | 15        |

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

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

5 8. I agree that the court may order and I will pay restitution in the amount of  
6 \$301,623 (\$626,623 less \$325,000 previously paid to the Internal Revenue Service). I agree that  
7 I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay.  
8 Before or after sentencing, I will, upon request of the Court, the government, or the U.S.  
9 Probation Office, provide accurate and complete financial information, submit sworn statements  
10 and give depositions under oath concerning my assets and my ability to pay, surrender assets I  
11 obtained as a result of my crimes, and release funds and property under my control in order to  
12 pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of  
13 sentencing.

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

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

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

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

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

6 The Government's Promises

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

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

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

12 The Defendant's Affirmations

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

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

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

22  
23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_  
OWEN GEORGE FIORE  
Defendant

1 KEVIN V. RYAN  
2 United States Attorney  
3

4 Dated: \_\_\_\_\_

5 DAVID L. DENIER  
6 Assistant United States Attorney  
7 Attorneys for Plaintiff

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 Dated: \_\_\_\_\_

13 RICHARD J. SIDEMAN  
14 Attorney for Defendant  
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