

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** :  
 :  
 v. : **CRIMINAL NO. 08-\_\_\_\_\_**  
 :  
**HOWARD J. CAIN** :

**GUILTY PLEA AGREEMENT**

Under Federal Rule of Criminal Procedure 11, the government, the defendant, and the defendant's counsel enter into the following guilty plea agreement. Any reference to the United States or the government in this agreement shall mean the Office of the United States Attorney for the Eastern District of Pennsylvania.

1. The defendant agrees to plead guilty to an indictment or information, waiving prosecution by indictment, charging him with one count of tax evasion, in violation of 26 U.S.C. § 7201, arising from defendant Cain's participation in a tax evasion scheme whereby he failed to file individual federal income tax returns during the years 1991 through 2006, reported no income, and paid no federal income taxes during those years. The defendant further acknowledges his waiver of rights, as set forth in the attachment to this agreement.

2. The defendant agrees to pay the special victims/witness assessment in the amount of \$100 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment.

3. The defendant agrees to pay a fine and to make restitution in amounts to be determined by the Court.

4. The defendant agrees to cooperate fully and truthfully with the government as follows:

- a. Defendant agrees to provide truthful, complete and accurate information and testimony. The defendant understands that if he testifies untruthfully in any material way he can be prosecuted for perjury.
- b. Defendant agrees to provide all information concerning his knowledge of, and participation in the offenses alleged in the indictment or information and any other crimes about which he has knowledge. The defendant further understands and agrees that: (i) all information and cooperation provided after signing this agreement may be used for any purpose and is not governed by any prior off-the-record proffer letter; and (ii) as of the date of the defendant signing this agreement, all information provided under any prior off-the-record proffer letter may be used for any purpose. The defendant agrees that the information provided under any off-the-record proffer letter may be used by the government to establish the factual basis for the guilty plea in this case.
- c. Defendant agrees that he will not falsely implicate any person or entity and he will not protect any person or entity through false information or omission.

- d. Defendant agrees to testify truthfully as a witness before any grand jury, hearing, or trial when called upon to do so by the government.
- e. Defendant agrees to hold himself reasonably available for any interviews as the government may require.
- f. Defendant agrees to provide all documents or other items under his control or which may come under his control which may pertain to any crime.
- g. Defendant understands that his cooperation shall be provided to any federal or other law enforcement agency as requested by the government.
- h. To enable the Court to have the benefit of all relevant sentencing information, the defendant waives any rights to a prompt sentencing, and will join any request by the government to postpone sentencing until after his cooperation is complete.
- i. Defendant agrees and understands that this agreement requires that his cooperation regarding any matter about which the defendant has knowledge as of the date of sentencing may continue even after the time that the defendant is sentenced. The defendant agrees that if the government determines that the defendant has failed to cooperate: the sentence may be set aside at the government's request; any charges that were dismissed under this agreement shall be reinstated upon motion of the government; any prosecution may

be based on and use any information provided by the defendant during the course of cooperation; and the government may withdraw any departure motion filed under USSG § 5K1.1, 18 U.S.C. § 3553(e) and/or Rule 35.

- j. Defendant understands that it is a condition and obligation of this cooperation agreement that the defendant not commit any additional crimes after the date of this agreement.
- k. Defendant agrees that if the government determines that the defendant has not provided full and truthful cooperation, or has not provided full and truthful information about the defendant's assets, income and financial status, or has committed any federal, state or local crime between the date of this agreement and his sentencing, or has otherwise violated any other provision of this agreement, then the government may at its option: (a) prosecute the defendant for any federal crime including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from this investigation, based on and using any information provided by the defendant during the course of cooperation; (b) upon government motion, reinstate and try the defendant on any counts which were to be, or which had been, dismissed, based on and using any information provided by the defendant during the course of cooperation; (c) decline to file any motion under USSG. § 5K1.1,

18 U.S.C. § 3553(e) and/or Rule 35; (d) be relieved of any obligations under this agreement regarding recommendations as to sentence; and (e) be relieved of any stipulations under the Sentencing Guidelines. Moreover, the defendant's previously entered guilty pleas will stand and cannot be withdrawn by him.

1. The decision both as to whether the defendant has violated the terms of this agreement and the election of a remedy or remedies will be in the sole discretion of the government. The defendant understands and agrees that the fact that the government has not asserted a breach of this agreement or enforced a remedy under this agreement will not bar the government from raising that breach or enforcing a remedy at a later time.

5. Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

6. If the government in its sole discretion determines that the defendant has fulfilled all of his obligations of cooperation as set forth above, at the time of sentencing, the government will:

- a. Make the nature and extent of the defendant's cooperation known to the Court.
- b. Move for departure from the Sentencing Guidelines pursuant to USSG § 5K1.1 if the government, in its sole discretion, determines

that the defendant has provided complete and substantial assistance in the investigation or prosecution of another person who has committed an offense, including testifying at any trial or proceeding as required. The defendant understands and agrees that: (1) the government will exercise its sole discretion regarding whether and how to investigate any information provided by the defendant; (2) as of the date of this agreement no determination has been made as to the defendant's eligibility for a § 5K1.1 motion; and (3) the government may refuse to file a § 5K1.1 motion if this plea agreement is breached in any way, including the commission of a crime after the date of this agreement.

- c. Make whatever sentencing recommendation as to imprisonment, fines, forfeiture, restitution and other matters which the government deems appropriate.
- d. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond factually to questions raised by the Court; correct factual inaccuracies in the presentence report or sentencing record; and

rebut any statement of facts made by or on behalf of the defendant at sentencing.

- e. Nothing in this agreement shall limit the government in its comments in, and responses to, any post-sentencing matters.

7. The defendant understands, agrees and has had explained to him by counsel that the Court may impose the following statutory maximum sentence:

**Tax Evasion**: 5 years imprisonment, a 3 year period of supervised release, a \$250,000 fine, restitution, and a \$100 special assessment.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to 3 years per count of conviction in the case of Class B felonies. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

8. The defendant may not withdraw his plea because the Court declines to follow any recommendation, motion or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

9. Pursuant to USSG § 6B1.4, the parties enter into the following stipulations under the Sentencing Guidelines Manual effective November 1, 2007. It is understood and agreed that: (1) the parties are free to argue the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments and departures; (2) these stipulations are not binding upon either the Probation Department or the

Court; and (3) the Court may make factual and legal determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

- a. The base offense level is 20 because the tax loss amount is greater than \$400,000 but less than \$1,000,000. U.S.S.G. §§ 2T1.1(a)(1) and 2T4.1(H).
- b. The offense level should be increased by 2 levels because the defendant failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity. U.S.S.G. § 2T1.1(b)(1).
- c. Other Crimes Stipulation: In addition to the offense of conviction, the parties stipulate and agree that the defendant, in violation of 18 U.S.C. § 371, engaged in a conspiracy with Vincent J. Fumo and others to defraud the Senate of Pennsylvania by submitting false invoices under a contract with the Senate Democratic Appropriations Committee that resulted in payments to the defendant for engaging in political campaign work, in violation of state law, resulting in fraud losses of more than \$200,000. The parties further stipulate and agree that, pursuant to U.S.S.G. §§ 1B1.2 and 1B1.3, this uncharged criminal conduct should be considered in determining the appropriate sentencing guidelines range of imprisonment and fine in this case.
- d. By his plea of guilty, the defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for the offenses in this



case for which he is pleading guilty, and therefore qualifies for the 2 level reduction set forth in § 3E1.1(a) of the Sentencing Guidelines.

- e. As of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, resulting in a 1-level downward adjustment under USSG § 3E1.1(b).

10. In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law. This waiver is not intended to bar the assertion of constitutional claims that the relevant case law holds cannot be waived.

- a. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of his sentence.
- b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:

- (1) the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth in paragraph 7 above;
- (2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines;
- (3) the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 543 U.S. 220 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the Court;

The defendant also waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

11. The defendant agrees to cooperate fully with the Internal Revenue Service as follows:

- a. The defendant agrees to pay restitution as directed by the Court to the Internal Revenue Service in the total amount of the unpaid tax of \$411,303 for the years 1997 through 2006, plus interest to be calculated as of the date of sentencing (\$326,719 as of April 24, 2008). Unless directed otherwise, restitution payments will be sent

to the Internal Revenue Service, Attn: MPU, Stop 151 (Restitution),  
PO Box 47-421, Doraville, GA 30362.

- b. Prior to sentencing, the defendant pay at least \$25,000 to the IRS to be applied to the taxes, interest, and penalties owed by him for tax years 1997 to 2006. This payment will reduce the restitution owed as agreed to in subparagraph a.
- c. The defendant agrees to pay all remaining taxes, interest and penalties, as determined by the IRS to be due and owing within the period of probation/supervised release. The defendant further agrees to pay all state and local taxes due and owing for these years within the period of probation/supervised release.
- d. Prior to sentencing, the defendant will properly execute and deliver to the IRS Examination Division IRS Form 4549 or IRS Form 870 for tax years 1997 through 2006.
- e. Prior to sentencing, the defendant will make a full financial disclosure to the IRS.
- f. Prior to sentencing, the defendant agrees to provide the IRS with all requested documents and information for the purpose of a civil audit.
- g. The defendant agrees that he will sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate

assessment of the taxes and interest that he agrees to pay as restitution in subparagraph a.

- h. The defendant agrees to sign IRS Form 8821, Tax Information Authorization, at any time that it is requested until the termination of his probation/supervised release.
- i. The defendant further agrees not to file any claims for refund of taxes, penalties and interest for the years 1991 through 2006 or for any other amounts paid pursuant to this agreement.
- j. Defendant agrees that subparagraphs a through i of this paragraph are appropriate conditions of probation/supervised release.
- k. Defendant agrees that he will make no objection to the entry of an order under Fed.R.Crim.P. 6(e) permitting the IRS Criminal Investigation Division to disclose to the IRS Examination and Collection Divisions (for purposes of a civil audit) all of the documents obtained, and the IRS reports produced, during the criminal investigation, whether or not such documents or reports are considered to be grand jury material within the meaning of Rule 6(e).
- l. Nothing in this agreement shall limit the Internal Revenue Service in its collection of any taxes, penalties or interest due from the defendant. Defendant agrees that this agreement, or any judgment, order, release, or satisfaction issued in connection with this

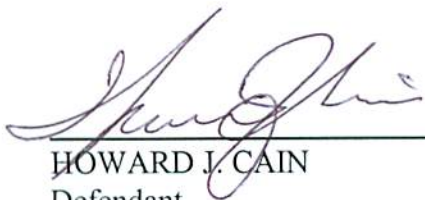


agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil tax liabilities, including tax, interest, and penalties.

12. The defendant's rights under this agreement shall in no way be dependent upon or affected by the outcome of any case in which he may testify.

13. The defendant is satisfied with the legal representation provided by the defendant's lawyer; the defendant and this lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that he is guilty.

14. It is agreed that the parties' guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

PATRICK L. MEEHAN  
United States Attorney

  
\_\_\_\_\_  
HOWARD J. CAIN  
Defendant  
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LINDA DALE HOFFA  
Chief, Criminal Division  
Assistant United States Attorney  
\_\_\_\_\_  
PETER J. SCUDERI  
Counsel for Defendant  
\_\_\_\_\_  
JOHN J. PEASE  
Assistant United States Attorney

Date: 5/6/08

**Attachment**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** :

**v.** : **CRIMINAL NO. 08-\_\_\_\_\_**

**HOWARD J. CAIN** :

**ACKNOWLEDGMENT OF RIGHTS**

I hereby acknowledge that I have certain rights that I will be giving up by pleading guilty.

1. I understand that I do not have to plead guilty.
2. I may plead not guilty and insist upon a trial.
3. At that trial, I understand
  - a. that I would have the right to be tried by a jury that would be selected from the Eastern District of Pennsylvania and that along with my attorney, I would have the right to participate in the selection of that jury;
  - b. that the jury could only convict me if all twelve jurors agreed that they were convinced of my guilt beyond a reasonable doubt;
  - c. that the government would have the burden of proving my guilt beyond a reasonable doubt and that I would not have to prove anything;
  - d. that I would be presumed innocent unless and until such time as the jury was convinced beyond a reasonable doubt that the government had proven that I was guilty;
  - e. that I would have the right to be represented by a lawyer at this trial and at any appeal following the trial, and that if I could not afford to hire a lawyer, the court would appoint one for me free of charge;
  - f. that through my lawyer I would have the right to confront and cross examine the witnesses against me;
  - g. that I could testify in my own defense if I wanted to and I could subpoena witnesses to testify in my defense if I wanted to;

h. that I would not have to testify or otherwise present any defense if I did not want to and that if I did not present any evidence, the jury could not hold that against me.

4. I understand that if I plead guilty, there will be no trial and I would be giving up all of the rights listed above.

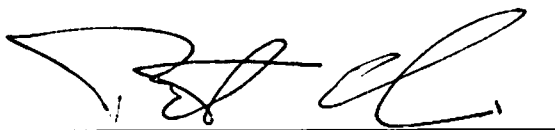
5. I understand that if I decide to enter a plea of guilty, the judge will ask me questions under oath and that if I lie in answering those questions, I could be prosecuted for the crime of perjury, that is, for lying under oath.

6. I understand that if I plead guilty, I have waived my right to appeal, except as set forth in appellate waiver provisions of my plea agreement.

7. Understanding that I have all these rights and that by pleading guilty I am giving them up, I still wish to plead guilty.



HOWARD J. CAIN  
Defendant



PETER J. SCUDERI  
Counsel for the Defendant