

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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|--------------------------|---|---------------------------|
| UNITED STATES OF AMERICA | : | S4 02 Cr. 649 (TPG)       |
| v.                       | : | Filed: 4/14/03            |
| JOHN GHIANNI,            | : | Violations: 15 U.S.C. § 1 |
|                          | : | 26 U.S.C. § 7206(1)       |
| Defendant.               | : |                           |

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PLEA AGREEMENT

The United States of America and the defendant John Ghianni hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure.

1. John Ghianni ("Ghianni") will plead guilty in the United States District Court for the Southern District of New York to each count of a two-count Information, United States v. John Ghianni, S4 02 Cr. 649 (TPG), in which he is charged with one count of violating 15 U.S.C. § 1 in connection with a conspiracy to rig bids and allocate contracts, and one count of violating 26 U.S.C. § 7206(1) in connection with his filing false and fraudulent tax returns for J. Ghianni Graphics, Inc. ("JGG, Inc.") for the tax years 1996 through 2001. The United States agrees to move to dismiss Ghianni from the pending Superseding Indictment, United States v. Mitchell Mosallem, et al., S3 02 Cr. 649 (TPG), immediately following the imposition of the sentence.

2. If Ghianni fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by the Antitrust Division of the Department of Justice, and with respect to tax offenses, Ghianni will not be further prosecuted criminally by the Tax

Division of the Department of Justice, for crimes committed prior to the date of this Agreement arising from the following activity: (a) an agreement or agreements to rig bids and allocate contracts for the supply of graphic services; (b) the payment of kickbacks to employees of his customers; (c) the generation of cash to pay those kickbacks; (d) deductions taken by JGG, Inc., on its federal tax returns for tax years 1996 through 2001; and (e) the failure by individuals who received kickbacks from Ghianni to report those kickbacks as income on their federal income tax returns. This Agreement does not provide any protection against prosecution for any crimes except as set forth above. This Paragraph does not apply to civil matters of any kind, any violations of federal securities laws, or crimes of violence.

3. It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the Antitrust Division and, to the extent set forth above, the Tax Division of the Department of Justice.

4. The United States and Ghianni agree and stipulate that pursuant to United States Sentencing Commission Guidelines Manual ("USSG") § 1B1.1(b)(1), the current version of the Manual (Nov. 2002) should be applied because there is no material difference between the application of that version and the version in effect at the time the offenses were occurring (the Nov. 2001 version).

5. Ghianni understands and agrees that pursuant to 15 U.S.C. § 1 and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for his violation of 15 U.S.C. § 1, a class E felony, is (a) a term of imprisonment of not more than three years; (b) a fine of not more than the greater of \$350,000, twice the gross pecuniary gain from the offense, or twice the victim's gross pecuniary loss from the offense; or (c) both such sentences. Ghianni

also understands that pursuant to 18 U.S.C. §§ 3563(b)(2) or 3583(d) and USSG § 5E1.1, the Court may impose an order of restitution as a condition of probation or supervised release. The Court may also impose a term of supervised release of no more than one year, pursuant to 18 U.S.C. § 3583(b)(3) and USSG § 5D1.2(a)(3). In addition, Ghianni understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG § 5E1.3, the Court must impose a special assessment of \$100.

6. Ghianni understands and agrees that pursuant to 26 U.S.C. § 7206(1) and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for his violation of 26 U.S.C. § 7206(1), a class E felony, is (a) a term of imprisonment of not more than three years; (b) a fine of not more than the greater of \$250,000, twice the gross pecuniary gain from the offense, or twice the victim's gross pecuniary loss from the offense; or (c) both such sentences, together with (d) the costs of prosecution. Ghianni also understands that pursuant to 18 U.S.C. §§ 3563(b)(2) or 3583(d) and USSG § 5E1.1, the Court may impose an order of restitution as a condition of probation or supervised release. The Court may also impose a term of supervised release of no more than one year, pursuant to 18 U.S.C. § 3583(b)(3) and USSG § 5D1.2(a)(3). In addition, Ghianni understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG § 5E1.3, the Court must impose a special assessment of \$100.

7. The United States and Ghianni agree and stipulate that the combined adjusted offense level applicable to the offenses charged in the Information is level 17, which is derived from the following calculations:

(a) The adjusted offense level for the conspiracy charged in Count One of the Information is level 11 (base level of 10 pursuant to USSG § 2R1.1, plus one level pursuant to

USSG § 2R1.1(b)(1) (agreement to refrain from submitting competitive bids));

(b) The adjusted offense level for the tax offense charged in Count Two of the Information is level 20 (offense level of 18, based on tax loss of \$266,000, pursuant to USSG § 2T1.1 and 2T4.1(G), plus 2 levels, pursuant to USSG § 2T1.1(b)(2)(sophisticated means));

(c) The combined offense level for Counts One and Two of the Information is level 20, pursuant to USSG § 3D1.4(c); and

(d) Ghianni has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, thereby reducing the combined adjusted offense level of 20 by 3 levels to level 17, pursuant to USSG § 3E1.1 (a) and (b).

8. The United States acknowledges that, pursuant to USSG § 5K2.0, Ghianni intends to move for a departure from the confinement portion of the sentence calculated in accordance with the above stipulations solely because of his age and family circumstances, combined. The United States agrees to take no position regarding such a motion based solely on the combination of factors specified herein.

9. The United States and Ghianni agree and stipulate that the fine range for Ghianni for the offenses charged in the attached Superseding Information is from \$20,000 to \$50,000, pursuant to USSG §§ 2R1.1(c)(1) and 5E1.2(c)(3).

10. Ghianni agrees that, within 10 days after the execution of this Agreement, he will cause JGG, Inc. to issue and file all appropriate Forms 1099 for the tax years 1996 through 2001. The United States agrees that it will inform the Court that it is not seeking restitution for the Internal Revenue Service as a condition of probation or supervised release as part of the sentence to be imposed in connection with the prosecution of Count Two.

11. The United States cannot and does not make any promises or representations as to what sentence Ghianni will receive. Ghianni understands that, as provided in Rule 11(c)(3)(B) of the Federal Rules of Criminal Procedure, if the Court does not impose a sentence consistent with the stipulations contained in this Agreement, he nevertheless has no right to withdraw his pleas of guilty. The United States reserves the right to make any statements to the Court or the Probation Office concerning the nature of the criminal violations charged in the Information, Ghianni's participation therein, and any other facts or circumstances that it deems relevant, to comment on or correct any representation made by or on behalf of Ghianni, and to supply any other information that the Court may require.

12. Ghianni understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

13. Ghianni agrees to provide to the United States, on request, all documents, records or other tangible evidence in his possession, custody, or control, relating to any matters about which he may be asked, if any such documents or other materials exist.

14. Ghianni agrees to waive any objection or defense to the prosecution of Count Two of the Superseding Information in the Southern District of New York based on venue, and any objection or defense to that Count based on the joinder of six distinct and separate tax offenses in a single count. Ghianni understands that these waivers are knowingly and voluntarily made after fully conferring with, and on the advice of, his counsel.

15. Ghianni understands and agrees that should he fail in any way to fulfill any of the obligations set out in this Agreement, the United States will be released from its obligations and

he will be subject to prosecution for any federal criminal violation of which the United States has knowledge. In addition, Ghianni agrees that, should the United States be released from its obligations under this Agreement, and should the United States prosecute him, he will not assert a defense that any such prosecution is time-barred based on a statute of limitations that expired after the signing of this Agreement.

16. This Agreement constitutes the entire agreement between the United States and Ghianni concerning the disposition of the charges contained in the Information. The United States has made no other promises to or agreements with Ghianni. This Agreement cannot be modified other than in a writing signed by the parties.

Dated: 4/14/03

/s/\_\_\_\_\_  
JOHN GHIANNI

/s/\_\_\_\_\_  
REBECCA MEIKLEJOHN

/s/\_\_\_\_\_  
JACK LITMAN, ESQ.  
Counsel for John Ghianni

/s/\_\_\_\_\_  
DOUGLAS M. TWEEN

/s/\_\_\_\_\_  
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