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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA

v.

REED A. RICHARD,

Defendant.

: Criminal No. 10-CR-10400-DPW
:
: Filed:
:
: Violations: 18 U.S.C. § 1349
: 26 U.S.C. § 7201
:
:

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REVISED

PLEA AGREEMENT

The United States of America and the defendant, Reed A. Richard, hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

1. Reed A. Richard ("Richard") will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and plead guilty in the United States District Court of Massachusetts to a three-count Information, in the form attached, in which he is charged with (a) one count of violating 18 U.S.C. § 1349 in connection with a conspiracy to commit mail fraud under 18 U.S.C. §§ 1341 and 1346 relating to Richard's receipt of kickbacks from a direct mail printing broker ("CC-1") that earned commissions on sales to his former employers, Mullen Advertising, Inc. ("Mullen") and later Prevision Marketing LLC ("Prevision"), and his role in fraudulently inflating invoices to Mullen and Prevision

and to defraud Mullen and Prevision and to deprive them of their right to the honest and faithful services of Richard, from in or about January 2000 until approximately February 2006; (b) one count of violating 18 U.S.C. § 1349 in connection with a separate conspiracy to commit mail fraud under 18 U.S.C. §§ 1341 and 1346 relating to Richard's receipt of kickbacks from another direct mail printing broker ("CC-2") whose brokerage company earned profits on sales to Mullen and Prevision and his role in fraudulently inflating invoices to Mullen and Prevision and to defraud Mullen and Prevision and to deprive them of their right to the honest and faithful services of Richard, from in or about January 2000 until approximately February 2006; and (c) one count of violating 26 U.S.C. § 7201 in connection with his evading and defeating a substantial part of the income tax due and owing by him to the United States on his U.S. Individual Income Tax Returns by failing to pay the correct tax due and owing on kickbacks that he received from the two direct mail printing brokers, principally by improperly claiming business deductions on his U.S. Corporate Income Tax Returns of his company, for the tax years 2004 and 2005.

GOVERNMENT'S AGREEMENT

2. Subject to Richard's full compliance with the understandings specified in this Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement, the Antitrust Division of the United States Department of Justice agrees not to bring further criminal charges against Richard for any crimes committed prior to the date of this Agreement arising from the following activity, as specified in the attached Information, and with respect to tax offenses committed prior to the date of this

Agreement relating to the same following activity, Richard will not be further prosecuted by the Tax Division of the United States Department of Justice: (a) Richard's receipt of kickback payments from brokers of direct mail printing and services; and (b) fraudulently inflating those vendor's invoices to Mullen and Prevision. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal securities laws, or to any crime of violence.

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

POSSIBLE MAXIMUM PENALTIES

4. Richard understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1349 is:

- (a) a term of imprisonment of not more than (20) twenty years;
- (b) a fine of not more than the greater of \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victims' gross pecuniary loss from the offense; or
- (c) both such sentences; and
- (d) a term of supervised release of no more than (5) five years, pursuant to 18 U.S.C. § 3583(b)(1) and U.S.S.G. §5D1.2(a)(1). Pursuant to 18 U.S.C. § 3583(e)(3), if

the defendant violates any condition of supervised release, he could be imprisoned up to three (3) years.

5. Richard also understands that:

(a) the Court shall impose an order of restitution, pursuant to 18 U.S.C. § 3663A and U.S.S.G. §5E1.1; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100 special assessment upon conviction for each count.

6. Richard also understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 26 U.S.C. § 7201 is:

(a) a term of imprisonment of not more than five (5) years; or

(b) a fine of not more than \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense;

(c) or both such sentences; together with

(d) the costs of prosecution.

7. Richard also understands that:

(a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3583(d), the Court may impose an order of restitution to the Internal Revenue Service as agreed upon by the terms of this Plea Agreement pursuant to 18 U.S.C. § 3663(a)(3), or as a condition of probation or supervised release pursuant to 18 U.S.C. §§ 3563(b)(2) or 3583(d) and U.S.S.G. §5E1.1;

(b) the Court may also impose a term of supervised release of no more than three (3) years, pursuant to 18 U.S.C. § 3583(b)(2) and U.S.S.G. §5D1.2(a)(2). Pursuant to 18 U.S.C. § 3583(e)(3), if the defendant violates any condition of supervised release, he could be imprisoned up to two (2) years; and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction.

SENTENCING GUIDELINES

8. Richard understands that United States Sentencing Guidelines (“Sentencing Guidelines”) are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing a sentence. Richard understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Richard understands that although the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

9. Richard stipulates and agrees that he willfully made and subscribed to false and fraudulent U.S. Individual Income Tax Returns for the tax years 2002 and 2003 by claiming false business deductions against approximately \$622,380 in kickbacks he

received, and that the approximately \$96,000 in resulting tax loss shall be considered relevant conduct for sentencing purposes, pursuant to U.S.S.G. § 1B1.3.

10. The United States and Richard acknowledge that they cannot agree on whether Richard should receive an adjustment for his role in the offense, pursuant to USSG § 3B1.3 (Abuse of a Position of Trust or Use of Special Skill). The United States contends that Richard should receive a two-level upward adjustment, pursuant to USSG § 3B1.3, while Richard contends that he should not receive any adjustment under USSG § 3B1.3. As a result, the parties cannot now agree on the adjusted offense level at which Richard should be sentenced, but acknowledge that the adjusted offense level applicable to the offenses charged in the attached Information, pursuant to Part B and prior to any adjustments pursuant to Part D or Part E of Chapter 3 of the Sentencing Guidelines, should be level 25 (57-71 months) or level 23 (46-57 months), depending upon whether the Court applies an adjustment pursuant to U.S.S.G. § 3B1.3.

11. The United States and Richard further acknowledge that they cannot agree on whether the fraud offenses charged in Counts One and Two and the tax offense charged in Count Three should be grouped pursuant to U.S.S.G. §§ 3D1.2 and 3D1.3. The United States contends that the fraud and tax counts do not group whereas Richard contends that the tax and fraud counts group. The parties agree that, pursuant to U.S.S.G. §§ 3D1.4:

(a) If the Court applies the two-level adjustment pursuant to U.S.S.G. § 3B1.3, grouping will have no impact on the adjusted offense level; and

(b) if the Court does not apply the U.S.S.G. § 3B1.3 adjustment, the adjusted offense level will further increase by one level if the tax and fraud offense are not grouped.

12. Furthermore, the parties can agree and hereby stipulate to the following:

(a) The fraud conspiracies charged in Counts One and Two group pursuant to U.S.S.G. § 3D1.2, with an aggregated loss of approximately \$2 million dollars that also includes uncharged relevant conduct, pursuant to U.S.S.G. § 1B1.3;

(b) Before any adjustment for role in the offense pursuant to USSG § 3B1.3, the adjusted offense level for the grouped fraud conspiracies charged in Count One and Two in the Information is level 23 (base level of 7 pursuant to USSG § 2B1.1(a)(1), plus 16 levels pursuant to U.S.S.G. § 2B1.1(b)(1)(I)(loss of more than \$1 million but less than \$2.5 million);

(c) The tax offense charged in Count Three resulted in approximately \$170,000 in tax losses that also includes uncharged relevant conduct, pursuant to U.S.S.G. § 1B1.3, and that therefore the base offense level for the tax count would be level 16, pursuant to U.S.S.G. § 2T1.1(a)(1) and § 2T4.1 (F); and

(d) Pursuant to U.S.S.G. §3E1.1, assuming Richard pleads guilty by December 20, 2010 and clearly demonstrates acceptance of responsibility through his allocation and subsequent conduct prior to the imposition of a sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. §3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional

1-level reduction is warranted, pursuant to U.S.S.G. §3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

13. The United States and Richard agree and stipulate that the fine range for Richard for the offenses charged in the Information pursuant to U.S.S.G. §§5E1.2(b) and (c)(3) is from \$7,500 to \$75,000 (level 20-22).

14. The United States and Richard agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The United States and Richard agree not to seek or support any sentence outside of the applicable Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The government agrees to recommend that any sentence to be imposed on Counts One, Two and Three shall be imposed and served concurrently.

15. Nothing in this agreement limits the right of the parties to (i) present to the Probation Department or the Court any facts relevant to sentencing; (ii) make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced; (iii) make any arguments regarding the factors to be considered in imposing a sentence pursuant to 18 U.S.C. § 3553(a), including a variance based on those factors; and (iv) seek an appropriately

adjusted Sentencing Guidelines Range if it is determined based upon new information that the defendant's criminal history category is other than Category I. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. §3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. §3C1.1, regardless of any stipulation set forth above, should the defendant move to withdraw his guilty plea once it is entered, or should it be determined that the defendant has either (i) engaged in conduct, unknown to the Antitrust Division of the Department of Justice at the time of the signing of this Agreement, that constitutes obstruction of justice, or (ii) committed another crime after signing this agreement.

16. It is understood that pursuant to Sentencing Guidelines §6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the Stipulated Guidelines Range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

17. Richard understands that the sentence to be imposed on him is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. Richard acknowledges that his entry of a guilty plea to the charged offenses

authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. The United States cannot, and does not, make any promise or representation as to what sentence Richard will receive. Moreover, Richard understands he will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Stipulated Guidelines Range set forth above.

18. Richard agrees that 30 days prior to the date of sentencing he will pay, or will enter into an agreement to pay, past taxes due and owing by him to the Internal Revenue Service for the tax years 2004 and 2005, including interest and applicable civil fraud penalties, on such terms and conditions as will be agreed on by the Internal Revenue Service and him. Richard will cooperate fully, completely, and truthfully with the IRS in determining the accuracy and completeness of all such amended returns.

19. Richard 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.

20. Richard agrees to waive any objection or defense he may have based on the United States joining in a single count the two distinct and separate instances of tax evasion charged in Count Three of the Information. Richard also agrees to waive any objection or defense he might have to any of the counts based on a statute of limitations that may have expired on the date of his signing of this Agreement. Richard understands that these waivers are knowingly and voluntarily made after fully conferring with, and on the advice of, his counsel, and are made for his own benefit.

21. Richard understands and agrees that should the conviction following his plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against him, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution.

REPRESENTATION BY COUNSEL

22. Richard has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. Richard has thoroughly reviewed this Agreement with his attorney, and has received satisfactory explanations from his attorney concerning each paragraph of this Agreement and alternatives available to Richard other than entering into this Agreement. After conferring with his attorney and considering all available alternatives, Richard has made a knowing and voluntary decision to enter into this Agreement.

VOLUNTARY PLEA

23. Richard hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, Richard waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the United States has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v.

Maryland, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972), that have not already been produced as of the date of the signing of this Agreement.

24. Richard's decision to enter into this Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Agreement. The United States has made no promises or representations to Richard as to whether the Court will accept or reject the recommendations contained within this Agreement.

ENTIRETY OF AGREEMENT

25. This Agreement constitutes the entire agreement between the United States and Richard concerning the disposition of the charges contained in the attached Information. The United States has made no other promises to or agreements with Richard. This Agreement cannot be modified except in writing, signed by the United States and Richard.

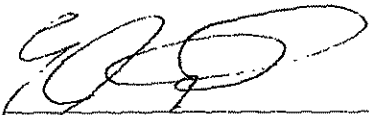
26. The undersigned attorneys for the United States have been authorized by the

Attorney General of the United States to enter into this Agreement on behalf of the United States.

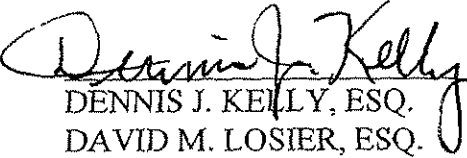
Dated: 12/14/10



REED A. RICHARD



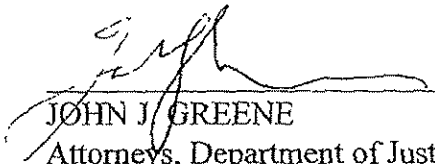
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