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7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 FRANK A. BILAN,
15 Defendant.

CASE NO. 1:15-CR-00099 LJO-SKO
PLEA AGREEMENT
DATE: TBD
TIME: 8:30 A.M.
COURT: Hon. LAWRENCE J. O'NEILL

16
17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The indictment in this case charges the defendant with violation(s) of 26 U.S.C. Section 7212(a)-
20 Count One, and 26 U.S.C. Section 7203-Counts Two and Three. This document contains the complete
21 plea agreement between the United States Attorney's Office for the Eastern District of California (the
22 "government") and the defendant regarding this case. This plea agreement is limited to the United
23 States Attorney's Office for the Eastern District of California and cannot bind any other federal, state, or
24 local prosecuting, administrative, or regulatory authorities.

25 B. Court Not a Party.

26 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
27 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
28 concerning the criminal activities of defendant, including activities which may not have been charged in

1 the indictment. The Court is under no obligation to accept any recommendations made by the
2 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
3 including the statutory maximum stated in this plea agreement.

4 If the Court should impose any sentence up to the maximum established by the statute, the
5 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
6 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
7 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
8 receive.

9 **II. DEFENDANT'S OBLIGATIONS**

10 **A. Guilty Plea.**

11 The defendant will plead guilty to Count One of the indictment, which is a violation of 26 U.S.C.
12 Section 7212(a), Corrupt Endeavor to Obstruct and Impede the Administration of Internal Revenue
13 Laws. The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the
14 Factual Basis for Plea attached hereto as Exhibit A are accurate.

15 The defendant agrees that this plea agreement will be filed with the Court and become a part of
16 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
17 plea(s) should the Court not follow the government's sentencing recommendations.

18 The defendant agrees that the statements made by him in signing this Agreement, including the
19 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
20 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
21 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
22 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
23 Agreement generally.

24 **B. Restitution.**

25 The defendant agrees to pay full restitution to the Internal Revenue Service (IRS) in the amount
26 of \$91,356. Any restitution paid to the IRS shall be credited by the IRS against any amount which the
27 defendant owes the IRS, in accordance with standard IRS procedure.

28 The defendant understands that this agreement does not relieve the defendant from any legal

1 obligation to pay additional amounts due and owing to the IRS. The defendant understands that nothing
2 in this agreement restricts the United States or the IRS from initiating any collection or civil
3 enforcement action relating thereto, nor does this agreement bar the defendant from civilly contesting
4 any liabilities determined by the IRS, or bar the defendant from exercising his rights in collection
5 proceedings as provided by the Internal Revenue code and standard IRS procedure. The defendant
6 understands that the factual basis of this plea agreement binds only the United States Attorney's Office
7 for the Eastern District of California in this criminal case, and does not bind any agency of the United
8 States in any other judicial, administrative, or other proceeding.

9 Restitution payments shall be by cashier's or certified check made payable to the Clerk of the
10 Court. Defendant further agrees that he will not seek to discharge any restitution obligation or any part
11 of such obligation in any bankruptcy proceeding.

12 **C. Fine.**

13 The parties agree that no fine is appropriate in this case.

14 **D. Special Assessment.**

15 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
16 a check or money order payable to the United States District Court to the United States Probation Office
17 immediately before the sentencing hearing. The defendant understands that this plea agreement is
18 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the
19 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
20 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

21 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

22 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
23 his plea, this plea agreement is voidable at the option of the government. If the government elects not to
24 void the agreement based on the defendant's violation, the government will no longer be bound by its
25 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
26 forth herein. A defendant violates the plea agreement by committing any crime or providing or
27 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
28 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting

1 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
2 arguments as to 18 United States Code section 3553, except as set forth in this agreement, personally or
3 through counsel, also constitutes a violation of the plea agreement. The government also shall have the
4 right (1) to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any
5 counts that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
6 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
7 any federal criminal violation of which the government has knowledge. The decision to pursue any or
8 all of these options is solely in the discretion of the United States Attorney's Office.

9 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
10 defenses that the defendant might have to the government's decision. Any prosecutions that are not
11 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
12 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
13 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
14 The defendant agrees not to raise any objections based on the passage of time with respect to such
15 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
16 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
17 of the date of this plea agreement. The determination of whether the defendant has violated the plea
18 agreement will be under a probable cause standard.

19 In addition, (1) all statements made by the defendant to the government or other designated law
20 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
21 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
22 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
23 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
24 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
25 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
26 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

27 **F. Asset Disclosure.**

28 The defendant agrees to make a full and complete disclosure of his assets and financial

1 condition, and will complete the United States Attorney's Office's "Authorization to Release
2 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
3 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order
4 to that effect. The defendant understands that if he fails to complete truthfully and provide the described
5 documentation to the United States Attorney's office within the allotted time, he will be considered in
6 violation of the agreement, and the government shall be entitled to the remedies set forth in section II.E
7 above, above.

8 **III. THE GOVERNMENT'S OBLIGATIONS**

9 **A. Dismissals/Other Charges.**

10 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
11 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
12 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
13 of Plea Agreement by Defendant/Withdrawal of Plea(s)), VI.B (Stipulated Guideline Calculation), and
14 VII.B (Waiver of Appeal and Collateral Attack) herein.

15 **B. Recommendations.**

16 1. Incarceration Range.

17 The government will recommend that the defendant be sentenced to the low end of the
18 applicable guideline range as determined by the Court. Should the applicable guideline range fall within
19 Zone C of the Sentencing Table, the government will recommend a split sentence of half the low-end
20 term served in prison and half the low-end term served in home detention, and a one (1) year term of
21 supervised release.

22 2. Acceptance of Responsibility.

23 The government will recommend a two-level reduction (if the offense level is less than 16) or a
24 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
25 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
26 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
27 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
28 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the

1 preparation of the pre-sentence report or during the sentencing proceeding.

2 **C. Use of Information for Sentencing.**

3 The government is free to provide full and accurate information to the Court and Probation,
4 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
5 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
6 understands and agrees that nothing in this Plea Agreement bars the government from defending on
7 appeal or collateral review any sentence that the Court may impose.

8 Further, other than as set forth above, the government agrees that any incriminating information
9 provided by the defendant during his cooperation will not be used in determining the applicable
10 guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to
11 representations made to the Court by the defendant, or on his behalf, that contradict information
12 provided by the defendant during his cooperation.

13 **IV. ELEMENTS OF THE OFFENSE**

14 At a trial, the government would have to prove beyond a reasonable doubt the following
15 elements of the offense(s) to which the defendant is pleading guilty, 26 U.S.C. Section 7212(a), Corrupt
16 Endeavor to Obstruct and Impede Administration of Internal Revenue Laws:

17 First, the defendant made an effort, acted, attempted to effectuate an arrangement or tried to do
18 something, the natural and probable consequences of which is to obstruct or impede the due
19 administration of the Internal Revenue laws,

20 Second, the defendant acted corruptly, that is, performed with the intention to secure an unlawful
21 benefit for oneself or another, and

22 Third, the defendant acted with the intent to impede or obstruct the due administration of justice
23 or the intent to intimidate or impede an officer of the United States in the enforcement of the federal tax
24 laws, and

25 The defendant fully understands the nature and elements of the crimes charged in the indictment
26 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
27 his attorney.

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V. MAXIMUM SENTENCE

A. Maximum Penalty.

The maximum sentence that the Court can impose is three years of incarceration, a fine of \$250,000, a one (1) year period of supervised release and a special assessment of \$100. By signing this plea agreement, the defendant also agrees that the Court can order the payment of restitution for the full loss caused by the defendant's wrongful conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the specific count(s) to which he is pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the Court.

B. Violations of Supervised Release.

The defendant understands that if he violates a condition of supervised release at any time during the term of supervised release, the Court may revoke the term of supervised release and require the defendant to serve up to 12 additional months imprisonment.

VI. SENTENCING DETERMINATION

A. Statutory Authority.

The defendant understands that the Court must consult the Federal Sentencing Guidelines and must take them into account when determining a final sentence. The defendant understands that the Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing Guidelines and must take them into account when determining a final sentence. The defendant further understands that the Court will consider whether there is a basis for departure from the guideline sentencing range (either above or below the guideline sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. The defendant further understands that the Court, after consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

B. Stipulations Affecting Guideline Calculation:

The government and the defendant agree that there is no material dispute as to the following sentencing guidelines variables and therefore stipulate to the following:

- 1 1. Base Offense Level: Fourteen (14), pursuant to U.S.S.G. § 2T4.1(E) and
2 2T1.1(a)(1), for tax loss of more than \$40,000 but less than \$100,000
- 3 2. Loss Amount: \$91,356. This amount includes additional tax due and owing to the
4 IRS by defendant Bilan for tax years 2005 to 2009.
- 5 3. Victim-related Adjustments: None.
- 6 4. Role in the Offense Adjustment: None.
- 7 5. Obstruction Adjustment: None.
- 8 6. Adjusted Offense Level: Fourteen (14)
- 9 7. Acceptance of Responsibility: See paragraph III.B.2 above
- 10 8. Criminal History: The parties estimate, but do not stipulate, that the defendant's
11 criminal history category will be I (one).
- 12 9. Departures: None.
- 13 10. Sentencing Range: 10-16 months imprisonment (The defendant understands that
14 if the criminal history category differs from the parties' estimate, his Guidelines
15 sentencing range may differ from that set forth here.)
- 16 11. Departures or Other Enhancements or Reductions:

17 The parties agree that they will not seek or argue in support of any other specific offense
18 characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"),
19 or cross-references. Both parties agree not to move for, or argue in support of, any departure from the
20 Sentencing Guidelines.

21 The defendant reserves the right to request a variance from the Sentencing Guidelines' advisory
22 guideline range as determined by the Court pursuant to the sentencing factors under 18 U.S.C. § 3553,
23 provided that the defendant will not request a sentence less than the low-end of the applicable guideline
24 range as determined by the Court to be served on home detention. The defendant acknowledges that if
25 the defendant requests or suggests in any manner a different sentence than what is called for under this
26 plea agreement, that will be considered a violation of the plea agreement. The government's remedies
27 and remaining obligations in this agreement shall be as outlined in paragraph II.E, above.

28 VII. WAIVERS

A. Waiver of Constitutional Rights.

The defendant understands that by pleading guilty he is waiving the following constitutional

1 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
2 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
3 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
4 compelled to incriminate himself.

5 **B. Waiver of Appeal and Collateral Attack.**

6 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
7 conviction, and sentence. The defendant agrees as part of his plea(s), however, to give up the right to
8 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
9 exceed the statutory maximum(s) for the offense(s) to which he is pleading guilty. The defendant
10 specifically gives up the right to appeal any order of restitution the Court may impose.

11 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
12 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
13 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
14 understands that these circumstances occur infrequently and that in almost all cases this Agreement
15 constitutes a complete waiver of all appellate rights.

16 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
17 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
18 aspect of the guilty plea, conviction, restitution order or sentence, except for non-waivable claims.

19 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever
20 attempts to vacate his plea(s), dismiss the underlying charges, or modify or set aside his sentence on any
21 of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E
22 herein.

23 **C. Waiver of Attorneys' Fees and Costs.**

24 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
25 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
26 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
27 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
28 charges previously dismissed).

1 **D. Impact of Plea on Defendant’s Immigration Status.**

2 Defendant recognizes that pleading guilty may have consequences with respect to his
 3 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
 4 are removable offenses, which could include an offense to which the defendant is pleading guilty. The
 5 defendant and his counsel have discussed the fact that the charge to which the defendant is pleading
 6 guilty could be considered an aggravated felony under certain circumstances, or a crime that could be
 7 determined to be an aggravated felony under 8 USC § 1101(a)(43) under certain circumstances. While
 8 there may be arguments that defendant can raise in immigration proceedings to avoid or delay removal,
 9 if it is determined that defendant has been convicted of a charge constituting an aggravated felony,
 10 automatic removal from the United States could be a consequence of the conviction. Removal and other
 11 immigration consequences are the subject of a separate proceeding, however, and defendant understands
 12 that no one, including his attorney or the district court, can predict to a certainty the effect of his
 13 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
 14 regardless of any immigration consequences that his plea may entail, even if the consequence is his
 15 automatic removal from the United States.

16 **VIII. ENTIRE PLEA AGREEMENT**

17 Other than this plea agreement, no agreement, understanding, promise, or condition between the
 18 government and the defendant exists, nor will such agreement, understanding, promise, or condition
 19 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
 20 counsel for the United States.

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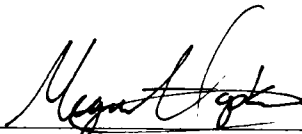
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IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

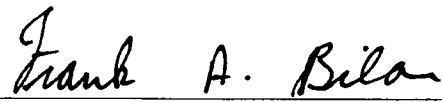
Dated:

 9/12/16
MEGAN T. HOPKINS
Attorney for Defendant FRANK A. BILAN

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated:

 9/9/16
FRANK A. BILAN
Defendant

C. Attorney for United States:

I accept and agree to this plea agreement on behalf of the government.

Dated:

9/12/16

PHILLIP A. TALBERT
Acting United States Attorney



HENRY Z. CARBALAL III
JEFFREY A. SPIVAK
Assistant United States Attorneys

EXHIBIT "A"

Factual Basis for Plea(s)

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3 Between 2000 and 2007, defendant FRANK A. BILAN worked as a salaried engineer at a
4 corporation in Milpitas, California, and earned income annually reported to him on Form W-2s.
5 Between 2005 and 2009, BILAN performed paid contract-based work, including through his
6 engineering consulting business called F&M Metal Products, based in Stanislaus County, California.
7 Between 2005 and 2009, BILAN received over \$900,000 in gross income from his employment,
8 consulting business and withdrawals from his retirement accounts. BILAN did not timely file true and
9 accurate federal income tax returns for tax years 2001 through 2009. BILAN's failure to timely file true
10 and accurate tax returns for tax years 2005 through 2009 resulted in tax loss to the Internal Revenue
11 Service ("IRS"), comprising additional tax due and owing by BILAN, in the amount of \$91,356. At all
12 relevant times, the IRS was an agency of the United States Department of the Treasury responsible for
13 enforcing and administering the tax laws of the United States and collecting taxes owed to the Treasury
14 of the United States. In response to BILAN's failure to file true and accurate federal income tax returns,
15 the IRS began sending BILAN letters, beginning in or about July 2008, reminding BILAN that he owed
16 past due taxes for prior tax years. The IRS later sent notices that it intended to levy some of BILAN's
17 assets to pay past due taxes owed by BILAN.

18
19 Beginning on or about November 25, 2008, and continuing thereafter up to and including
20 November 5, 2010, in the Eastern District of California, BILAN did corruptly endeavor to obstruct and
21 impede the due administration of the internal revenue laws of the United States, concerning the
22 ascertainment, computation, assessment and collection of federal taxes by, among other things: (1)
23 attempting to file purported federal income tax returns and other documents with the IRS in BILAN's
24 name that did not report any of BILAN's gross income for tax years 2001 through 2005; and (2)
reporting on a fictitious Form 1099-OID the purported discharge of monies owed by BILAN to the IRS.

25
26 For example, on or about July 20, 2009, BILAN sent a personal letter from Stanislaus County,
27 California to the IRS attempting to file purported federal income tax returns with the IRS in BILAN's
28 name that did not report any of BILAN's gross income for tax years 2001 through 2005. On or about
November 5, 2010, BILAN sent a personal letter and accompanying documents from San Joaquin
County, California to the IRS. Included with this correspondence, BILAN submitted an erroneous 2010
IRS Form 1096 ("Annual Summary and Transmittal of U.S. Information Returns"), with attached 2010
IRS Form 1099-OID ("Form 1099-OID"). BILAN falsely reported on the Form 1099-OID a discharge
of monies owed by defendant BILAN to the IRS in the amount of \$478,614.29.

At all relevant times, BILAN attempted to effectuate an arrangement, the natural and probable
consequences of which was to obstruct or impede the due administration of the Internal Revenue laws.
At all relevant times, BILAN acted corruptly, that is, he acted with the intent to secure an unlawful
benefit for oneself or another, specifically, unlawfully avoiding payment of additional tax due and owing
by BILAN for tax years 2005 through 2009. At all relevant times, BILAN acted with the intent to
impede and obstruct the due administration of justice and the intent to impede officers of the United
States in the enforcement of the federal tax laws. Specifically, BILAN performed these acts with the
intent of obstructing and impeding the IRS, and its officers and agents, from the ascertainment,
computation, assessment and collection of federal taxes owed by BILAN. BILAN's actions resulted in a
tax loss to the IRS of approximately \$91,356. All in violation of 26 U.S.C. Section 7212(a).