

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

PETER G. ROGAN

No. 08 CR 415

Judge Harry D. Leinenweber

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant PETER G. ROGAN, and his attorneys, THOMAS BREEN and ROBERT STANLEY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C) and Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

**Charges in This Case**

2. The indictment in this case charges defendant with conspiracy to obstruct justice, in violation of Title 18, United States Code, Section 1512(k) (Count One), perjury in violation of Title 18, United States Code, Section 1621 (Counts Two and Three), and obstruction of justice in violation of Title 18, United States Code, Section 1512(c) (Count Four).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorneys.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count Two of the indictment, which charges defendant with perjury, namely, that defendant, in an affidavit filed in a proceeding before the United States District Court for the Northern District of Illinois, falsely stated in relevant part, “I have no control over the Irrevocable Trust or its distributions to the beneficiaries,” when in fact defendant knew at the time of his affidavit that the statement was false, and that he did in fact exercise and had exercised control over the trust in the Bahamas and its distributions to the beneficiaries, in violation of Title 18, United States Code, Section 1621(2).

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Two of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

On or about December 21, 2006, in the Northern District of Illinois, Eastern Division, defendant PETER G. ROGAN, in a declaration and statement under penalty of perjury, captioned “AFFIDAVIT” and dated December 20, 2006, which affidavit was filed in the United States District Court for the Northern District of Illinois in response to an affidavit filed on behalf of the United States as part of the United States’ efforts to collect its approximately \$64,259,032 judgment in case

number 02 C 3310, willfully subscribed as true a material matter that he did not believe to be true, namely:

“I have no control over the Irrevocable Trust or its distribution to the beneficiaries. . .”

when in truth and fact, as ROGAN knew at the time of his affidavit, he did in fact exercise and had exercised control over that trust in the Bahamas and its distribution to the beneficiaries.

### ***Background***

More specifically, ROGAN worked in the healthcare and hospital administration fields for approximately thirty years, operated businesses in those fields, and acquired assets in the millions of dollars. In or about the mid-1990s, ROGAN took steps to protect those assets, including by creating offshore trusts. In 1996, ROGAN, with the assistance of his co-defendant Frederick Cuppy, a lawyer who was licensed to practice law in the State of Indiana, as well as “Florida Lawyer,” established the “Peter G. Rogan Irrevocable Trust 001” in the Bahamas. ROGAN, with the assistance of Cuppy and Florida Lawyer, established the Trust to protect ROGAN’s assets from future judgment creditors; that is, from entities and persons who might successfully sue ROGAN and obtain money judgments. The Trust was established with a Bahamian trust company in 1996, but later, that company was absorbed by another Bahamian entity, Oceanic Bank and Trust Co., which became the successor Trustee. Thereafter, OBAT served as Trustee of the Trust until a third trustee agreed to serve as a successor Trustee.

In establishing the Trust, ROGAN, with the assistance of Cuppy and Florida Lawyer, arranged that the Trust would be funded with ROGAN's assets. On behalf of ROGAN, money was transferred to the Trust. In addition, ROGAN was a beneficiary of the Trust, and was eligible for distributions of principal and income from the Trust.

Notwithstanding language in the formal documents that created the Trust that purported to vest the Trustee with the sole discretion and authority to manage the Trust's assets and make distributions from the Trust, ROGAN, Cuppy, and Florida Lawyer, anticipating that the Trustee would comply with it, submitted a "Letter of Wishes" signed by ROGAN that stated in part, "In the administration of the Trust, I wish that you would follow the terms of the Trust subject to the following: 1. Please distribute all of the income of the Trust to me upon receipt by the Trust."

Cuppy and Florida Lawyer secured, and ROGAN signed, an agreement with the Trustee whereby the Trustee would not interfere with or control the corporate entities that the Trust purportedly owned. Cuppy and Florida Lawyer also secured, and ROGAN signed, the Trust's Deed of Settlement, a provision of which provided that the Trust and the Trustee would be subject to the control of a so-called "Trust Protector." With ROGAN's knowledge and approval, Florida Lawyer and Cuppy agreed that Cuppy would form a corporation to serve as "Trust Protector" and that Cuppy would control it, which he did.

Between 1996 and 2006, with ROGAN as beneficiary and settlor, Cuppy communicated often with the Trustee concerning Cuppy's provision of monies to the Trust, investments of the Trust's cash assets, distributions from the Trust, and other matters that impacted the Trust.

***The United States Obtains a \$64-Million Judgment Against ROGAN***

In May 2002, the United States of America filed a civil lawsuit against ROGAN in the United States District Court for the Northern District of Illinois, which was assigned case number 02 C 3310. Generally, the complaint alleged that ROGAN had violated federal law and defrauded the United States. In September 2006, after a trial before the Court, the Court issued an opinion and order finding ROGAN liable to the United States in the amount of approximately \$64,259,032. On or about September 29, 2006, the Court entered a judgment order in favor of the United States against ROGAN in the amount of approximately \$64,259,032. The United States Court of Appeals for the Seventh Circuit later affirmed the \$64-million Judgment.

***Dexia Crédit Local Obtains a \$124-Million Judgment Against ROGAN and ROGAN Willfully Violates Court Orders and Otherwise Acts Wrongfully in 02 CR 8288 (Kennelly, J.)***

*Dexia Crédit Local* was a bank that extended credit financing to a ROGAN-affiliated healthcare entity. In November 2002, Dexia filed a lawsuit against ROGAN, his affiliated healthcare entities, and others, in the United States District Court for the Northern District of Illinois, which was assigned case number 02 C 8288. The complaint alleged that ROGAN had misled and defrauded Dexia in

connection with certain financial transactions. On May 3, 2007, the Court entered a Final Default Judgment in favor of Dexia and against ROGAN and others for a total amount of \$124,280,712.

Prior to the Court's Final Default Judgment in favor of Dexia, Dexia lodged discovery requests to locate and identify ROGAN-related assets, including any off-shore trusts. In doing so, on June 9, 2004, as part of Dexia's lawsuit, the Court ordered ROGAN to "fully and completely" produce certain documents, which included Rogan Trust documents. On August 4, 2004, the Court ordered ROGAN to produce "documents not yet produced, that are required by the Court's 06/09/04 order." Thereafter, on August 16, 2004, September 9, 2004, and September 20, 2004, ROGAN made and caused his counsel to make repeated willfully false representations to the Court regarding ROGAN's contention that he, among other things, gave up control over the money he put into the Rogan Trust when he contributed funds into the Trust. This and other representations were willfully false in that ROGAN exercised and had exercised control over the Rogan Trust in the Bahamas and its distribution to the beneficiaries.

In so acting, ROGAN willfully made and caused to be made material false statements to the Court, having reason to know that his actions were wrongful and also willfully violated at least two separate orders of the Court during the course of the Dexia litigation, including the Court's orders of June 9, 2004 and August 4, 2004, each ordering ROGAN to produce documents to Dexia.

### **Post-Judgment Collection Efforts**

With the United States having secured a \$64-million Judgment against ROGAN, and Dexia a \$124-million Judgment against ROGAN, both Dexia and the United States instituted various post-judgment proceedings to enforce their respective judgments. The United States and Dexia cooperated with one another in these post-judgment proceedings, including sharing information pertinent to the identity and location of assets available to satisfy their respective judgments. ROGAN acknowledges that information concerning the Rogan Trust was important to these collection efforts and that he was aware that he was obliged to provide truthful and complete information during the course of these judgment enforcement proceedings.

As part of its post-judgment collection efforts, on November 6, 2006, the United States filed a motion with the Court entitled “Motion for Installment Payment,” by which the United States sought an order from the Court directing ROGAN to make periodic payments to the United States to reduce the money he owed on the \$64-million Judgment, plus post-judgment interest. On or about December 12, 2006, in support of its Motion for Installment Payment, the United States filed with the Court an affidavit signed by a paralegal specialist with the United States Attorney’s Office, Financial Litigation Unit, which stated in part:

Mr. Rogan is the discretionary beneficiary of the Peter G. Rogan Irrevocable Trust. He appears to readily have access to the assets of this trust as well as other trusts in the names of his children. Based on the most recent records Rogan provided, there is between \$30 and \$35 million in these trusts. Rogan’s

beneficial interest in the Peter G. Rogan Irrevocable Trust alone generates dividend and/or interest income in the amount of \$760,000 per year.

**Charged Conduct**

On or about December 21, 2006, in response and opposition to the affidavit and the relief sought by the United States to collect on its \$64-million Judgment, ROGAN filed and caused to be filed with the United States District Court for the Northern District of Illinois, a document captioned, “AFFIDAVIT IN RESPONSE TO THE UNITED STATES’ MOTION FOR INSTALLMENT PAYMENT ORDER,” which ROGAN signed and willfully subscribed as true and that contained the following statement concerning a material matter that he did not believe to be true, namely:

“I have no control over the Irrevocable Trust or its distribution to the beneficiaries. . .”

when in truth and fact, as ROGAN knew at the time of his affidavit, he did in fact exercise and had exercised control over the Rogan Trust in the Bahamas and its distribution to the beneficiaries.



### Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

### Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2014 Guidelines Manual.

**b. Offense Level Calculations.**

i. The base offense level for the count of conviction (Count Two) is 14 pursuant to Guideline § 2J1.3.

ii. It is the government's position that defendant's offense and relevant conduct resulted in substantial interference with the administration of justice and, thus, pursuant to Guideline § 2J1.3(b)(2), defendant's offense level is increased by 3 levels. Defendant disagrees that his conduct resulted in substantial interference with the administration of justice.

iii. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested information as may be ordered or modified by the Court, a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

iv. If the Court determines that defendant has fully accepted responsibility within the meaning of Guideline § 3E1.1(a), and that the offense level is 16 or higher prior to the application of any reduction for acceptance of responsibility pursuant to § 3E1.1(a), the government will move for an additional one-level reduction in the offense level pursuant to Guideline § 3E1.1(b) because

defendant has timely notified the government 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.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. Defendant and his attorneys and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Pursuant to Paragraph 19 of this Agreement, defendant will request the Court to waive and not require preparation of a Pre-Sentence Report. The government will take no position regarding defendant's request. Should the Court not grant defendant's request and thereby decide to order a Pre-Sentence Report, defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall

not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

#### **Agreements Relating to Sentencing**

11. This Agreement will be governed, in part, by Fed. R. Crim. P. 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of no less than 12 months' imprisonment and no more than 21 months' imprisonment and shall not include a criminal fine. Other than the agreed range of incarceration and the parties' agreement as to no criminal fine, the parties have agreed that each side is free to argue for, and recommend, whatever sentence of incarceration it deems appropriate within the agreed range and the Court remains free to impose the sentence of incarceration it deems appropriate within the agreed range. If the Court accepts and imposes a term of incarceration within the agreed range as set

forth herein and agrees to impose no criminal fine, defendant may not withdraw this plea as a matter of right under Fed. R. Crim. P. 11(d) and (e). If, however, the Court refuses to impose a term of incarceration as set forth herein or imposes a criminal fine, thereby rejecting this Agreement, or otherwise refuses to accept defendant's plea of guilty, either party has the right to withdraw from this Agreement.

12. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

13. After sentence has been imposed on the count to which defendant pleads guilty (that is, Count Two), the government will move to dismiss the remaining counts of the indictment (that is, Counts One, Three and Four). In addition, after defendant has entered a plea of guilty pursuant to this Agreement, the government will recommend that the Court dismiss the Order to Show Cause, Case No. 08 CR 922, pending before Judge Matthew F. Kennelly. To determine whether Judge Kennelly will accept the government's recommendation that the Court dismiss its Order to Show Cause after defendant pleads guilty in this matter, before defendant pleads guilty in this matter, the parties will jointly appear before Judge Kennelly to inform the Court of this plea agreement, its terms, and its acceptability to the Court for purposes of dismissing the Order to Show Cause.

## Acknowledgments and Waivers Regarding Plea of Guilty

### **Nature of Agreement**

14. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 08 CR 415.

15. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

16. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge

sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorneys would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorneys would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment within the maximum provided by law, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of



counsel, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

17. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

18. Defendant will request the Court to waive and not require preparation of a Pre-Sentence Report. The government will take no position regarding defendant's request. Should the Court not grant defendant's request and thereby decide to order a Pre-Sentence Report, defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing at Sentencing regardless of whether a Pre-Sentence Report is prepared.

19. If the Court decides to order the preparation of a Pre-Sentence Report, defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding

all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

### **Other Terms**

20. Should the Court grant defendant's request to waive the preparation of the Pre-Sentence Report, the parties agree to jointly request that the Court hold a sentencing hearing within two weeks of defendant entering a plea of guilty to Count Two of the indictment.

21. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations,

rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant. Nothing in this paragraph or the preceding paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

### **Conclusion**

22. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

23. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph,

notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

25. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

\_\_\_\_\_  
ZACHARY T. FARDON  
United States Attorney

\_\_\_\_\_  
PETER G. ROGAN  
Defendant

\_\_\_\_\_  
DANIEL W. GILLOGLY  
Assistant U.S. Attorney

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THOMAS BREEN  
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ANDREW S. BOUTROS  
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ERIC S. PRUITT  
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