

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-80013-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DUSKO BRUER,

Defendant.

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida and the Tax Division, United States Department of Justice (collectively, "the Office") and DUSKO BRUER (hereinafter referred to as the "Defendant") enter into the following agreement:

1. The Defendant agrees to plead guilty to an Information charging him with one count of Tax Evasion, in violation of Title 26, United States Code, Section 7201 for tax year 2008 and one count of Willful Failure to File a Report of Foreign Bank or Financial Account, in violation of Title 31, United States Code, Sections 5314, 5322 for calendar year 2014.
2. The Defendant agrees that he shall waive Indictment and proceed via Information.
3. The Defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The Defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's



probation office, which investigation will commence after the guilty plea has been entered. The Defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The Defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the Defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that the Defendant may not withdraw his plea solely as a result of the sentence imposed.

4. The Defendant also understands and acknowledges that as to Count 1, tax evasion, the Court may impose a statutory maximum term of imprisonment of up to five (5) years, followed by a term of supervised release of up to three (3) years. As to Count 2, willful failure to file a report of foreign bank or financial account, the Court may impose a statutory maximum term of imprisonment of up to five (5) years, followed by a term of supervised release of up to three (3) years. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000, or twice the gross gain or loss, whichever is greater. The Defendant acknowledges that the Court may impose restitution.

5. The Defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a special assessment in the amount of \$100 as to each count will be imposed on the Defendant. The Defendant agrees that any special assessment imposed shall be paid at the time of sentencing. If the Defendant is financially unable

to pay the special assessment, the Defendant agrees to present evidence to this Office and the Court at the time of sentencing as to the reasons for the Defendant's failure to pay.

6. The Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the Defendant and the Defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The Office agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the Defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the Defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the Defendant's offense level is determined to be 16 or greater, the Office will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the Defendant has assisted authorities in the investigation or prosecution of the Defendant's own misconduct by timely notifying authorities of the Defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. The Office, however, will not be required to make this motion if the Defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to

committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The Office and the Defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

a. Tax Fraud:

- i. Applicable Guideline: The applicable Guideline is USSG §2T1.1;
- ii. Loss: Although the Defendant is pleading guilty to tax evasion for tax year 2008, under §2T1.1 and §1B1.3(a)(2), the total additional tax due and owing for tax years 2007 through 2014 is **\$2,789,538**. For purposes of Section 2T4.1, the parties agree to recommend that the Defendant be held accountable for a tax loss **between \$1,500,000 and \$3,500,000**.
- iii. Specific Offense Characteristics: The Defendant agrees that the offense involved sophisticated means, pursuant to Section 2T1.1(b)(2), as he utilized offshore financial accounts.

b. Willful Failure to File an FBAR

- i. Applicable Guideline: The applicable Guideline is USSG §2S1.3;
- ii. Loss: Although the Defendant is pleading guilty to willfully failing to file an FBAR for calendar year 2014, the parties agree to recommend, for purposes of Sections 2S1.3(a)(2) and 2B1.1, that the value of the funds should be **between \$3,500,000 and \$9,500,000**.

iii. Specific Offense Characteristics: For purposes of Section 2S1.3(b)(2), the Defendant agrees that (A) he was convicted of an offense under subchapter II of chapter 53 of title 31, United States Code; and (B) he committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12-month period.

9. Restitution:

a. The Defendant agrees that the amount of restitution reflected in this agreement results from the Defendant's fraudulent conduct.

b. The Defendant agrees to pay restitution to the Internal Revenue Service in the total amount of \$2,629,927, pursuant to Title 18, United States Code, Section 3663(a)(3).

c. The total amount of the restitution consists of the following:

TAX YEAR	AMOUNT TO BE CREDITED TO TAX
2007	\$613,522
2008	\$960,042
2009	\$708,546
2010	\$395,944
2011	\$31,699
2012	\$14,980
2013	\$8,548
2014	\$56,227

The Defendant agrees to pay Title 26 interest on the restitution amount; interest runs from the last date prescribed for payment of the relevant tax liability until the IRS receives payment in

full. The Defendant agrees that restitution is due and payable immediately after the judgment is entered and is subject to immediate enforcement, in full, by the United States.

10. If the Court imposes a schedule of payments, the Defendant agrees that the schedule of payments is a schedule of the minimum payment due, and that the payment schedule does not prohibit or limit the methods by which the United States may immediately enforce the judgment in full. The IRS will use the amount of restitution ordered as the basis for a civil assessment under 26 U.S.C. § 6201(a)(4). The Defendant does not have the right to challenge the amount of this restitution-based assessment. *See* 26 U.S.C § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the Defendant's timely payment of restitution according to that schedule will preclude the IRS from immediately collecting the full amount of the restitution-based assessment.

11. The Defendant is entitled to receive credit for restitution paid pursuant to this plea agreement against those assessed civil tax liabilities due and owing for the same periods for which restitution was ordered. The Defendant understands and agrees that the plea agreement does not resolve the Defendant's civil tax liabilities, that the IRS may seek additional taxes, interest and penalties from the Defendant relating to the conduct covered by this plea agreement and for conduct relating to another time period, and that satisfaction of the restitution debt does not settle, satisfy, or compromise the Defendant's obligation to pay any remaining civil tax liability. The Defendant authorizes release of information to the IRS for purposes of making the civil tax and restitution based assessments.

12. The Defendant understands that he is not entitled to credit with the IRS for any payment until the payment is received by the IRS.

13. If full payment cannot be made immediately, the Defendant agrees to make a complete and accurate financial disclosure to the IRS on forms prescribed by the IRS (including, but not limited to, IRS Form 433-A and Form 433-B, as appropriate), and to disclose to the IRS any and all additional financial information and financial statements provided to the probation office. Defendant also agrees to provide the above-described information to the probation office.

14. If the Defendant makes a payment of the restitution agreed to in paragraph 9 prior to sentencing, the payment will be applied as a credit against the restitution ordered pursuant to paragraph 9. The government will provide an updated interest figure at sentencing.

15. The Defendant agrees to cooperate with the I.R.S. in its civil examination, determination, assessment, and collection of all taxes of any parties of any years related to this prosecution, including, but limited to, any corporate, payroll, and personal tax liabilities for tax years 2007 through 2014, and further agrees not to conceal, transfer, or dissipate funds or property that could be used to satisfy such taxes, penalties, and interest. The Defendant agrees to provide the I.R.S. with any documentation and information in the Defendant's possession and/or control requested by the I.R.S. in connection with its civil examination, determination, assessment, and collection of any corporate, payroll, and personal tax liabilities for herself and any entities related in any way to him prior to sentencing, and the Defendant stipulates to the authenticity and admissibility in any civil or criminal proceeding of any documentation provided by the Defendant to the I.R.S. The Defendant also hereby waives any rights he may have regarding disclosure of tax information for any purpose, including but not limited to, any disclosure by I.R.S. Criminal Investigation to the I.R.S Examination and Collection divisions for all documents obtained and I.R.S. reports produced during the criminal investigation.

16. This agreement does not resolve the Defendant's civil tax liability for any years and does not bind the I.R.S. in any way regarding its efforts to examine or collect Defendant's civil tax liabilities. The Defendant also agrees to pay all taxes, interest, and penalties due and owing to the I.R.S., including all taxes, interest, and penalties on his corporate, payroll and personal tax liabilities for himself and any entities related in any way to him for tax years 2007 through 2014. ^{KAM} Nothing in this agreement shall limit the I.R.S. in its civil determination, assessment, and collection of any taxes, interest, and/or penalties that the Defendant or any entities related in any way to him may owe.

17. The Defendant agrees that any statements made by him to the I.R.S. or any law enforcement personnel, in this Agreement, and/or in the parties' Factual Agreement executed on December 20, 2019, shall be admissible against the Defendant without any limitation in any civil or criminal proceeding, and the Defendant stipulates to the authenticity and admissibility, in any civil or criminal proceeding, of any documentation provided by the Defendant to the I.R.S. The Defendant hereby waives any protection afforded by Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure with regard to any such statements and documentation. In the event that the Defendant withdraws from this agreement prior to pleading guilty and/or fails to fully comply with any of the terms of this agreement, the United States will, at its option, be released from its obligations under this Agreement, but under no circumstances, shall the Defendant be released from the agreements and waivers made by him in this paragraph and paragraphs 15 and 16 of this Agreement.

18. If full payment cannot be made immediately, the Defendant agrees to make a complete and accurate financial disclosure to the IRS on forms prescribed by the IRS (including, but not limited to, IRS Form 433-A). The Defendant also agrees to provide the above-described

information to the probation office. The Defendant also agrees to make full and accurate disclosure of his financial affairs to the U.S. Attorney's Office. The Defendant agrees that he will not sell, hide, waste, encumber, destroy, or otherwise devalue any asset until his restitution and/or fine is paid in full without the prior approval of the U.S. Attorney's Office.

19. The Defendant agrees not to file any claim for refund of taxes or interest represented by any amount of restitution paid pursuant to this agreement.

20. The Defendant agrees that he is liable for the fraud penalty under Title 26, United States Code, Section 6663 or 6651(f) that will be assessed for the taxable years 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014.

21. The Defendant is aware that the sentence has not yet been determined by the Court. The Defendant also is aware that any estimate of the probable sentencing range or sentence that the Defendant may receive, whether that estimate comes from the Defendant's attorney, the Office, or the probation office, is a prediction, not a promise, and is not binding on the Office, the probation office or the Court. The Defendant understands further that any recommendation that the Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The Defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the Defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the Defendant, the Office, or a recommendation made jointly by the Defendant and the Office.

SENTENCING APPEAL WAIVER

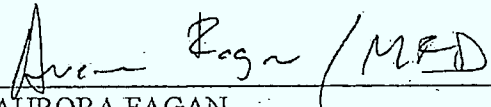
22. The Defendant is aware that Title 18, United States Code, Section 3742 and Title 28, United States Code, Section 1291 afford the Defendant the right to appeal the sentence imposed

in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the Defendant hereby waives all rights conferred by Sections 3742 and 1291 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The Defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the United States appeals the Defendant's sentence pursuant to Sections 3742(b) and 1291, the Defendant shall be released from the above waiver of appellate rights. By signing this agreement, the Defendant acknowledges that the Defendant has discussed the appeal waiver set forth in this agreement with the Defendant's attorney.

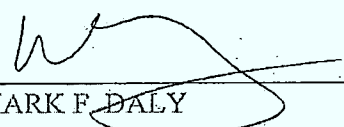
^{KAM} 23. This is the entire agreement and understanding between the Office and the Defendant.

There are no other agreements, promises, representations, or understandings.

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

Date: April 1, 2020 By: 
AURORA FAGAN
ASSISTANT U.S. ATTORNEY

RICHARD E. ZUCKERMAN
PRINCIPAL DEPUTY ASSISTANT
ATTORNEY GENERAL
TAX DIVISION

Date: April 1, 2020 By: 
MARK F. DALY

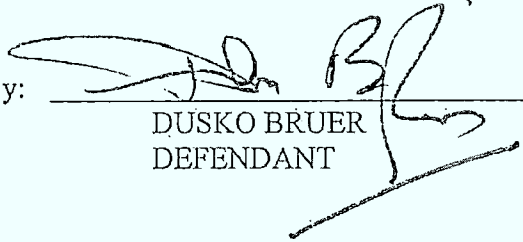


SENIOR LITIGATION COUNSEL
TAX DIVISION

Date: 12/20/19

By: 
JOEL HIRSCHORN
ATTORNEY FOR DEFENDANT

Date: Dec 20, 2019

By: 
DUSKO BRUER
DEFENDANT

Tax Evasion Sentencing Calculation

2T1.1(a)(1) & 2T4.1(H): +22

2T1.1(b)(2) +2

24 (51 to 63 months – without acceptance)

21 (37 to 46 months – with acceptance)

FBAR Sentencing Calculation

2S1.3(a)(2) 6

2B1.1(b)(1)(J) +18

2S1.3(b)(2) +2

26 (63 to 78 months – without acceptance)

23 (46 to 57 months – with acceptance)

