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U.S. DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MAY 22 2007

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN 07 MAY 22 A11 :25

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-311 (LSA)

RONALD A. MISERENDINO,

Defendant.

PLEA AGREEMENT

1. The United States of America, by its attorneys, Steven M. Biskupic, United States Attorney for the Eastern District of Wisconsin, and Matthew L. Jacobs, Assistant United States Attorney, and the defendant, Ronald A. Miserendino, individually and by his attorney, Jonathan L. Marks, (collectively the "parties") pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

CHARGES

2. The defendant has been charged in all ten counts of a ten-count superseding indictment returned in this district on May 11, 2006. The indictment charges the defendant with bank fraud, in violation of 18 U.S.C. § 1344 (Count One); mail fraud, in violation of 18 U.S.C. § 1341 (Counts Two through Seven); wire fraud, in violation of 18 U.S.C. § 1343 (Count Eight); tax evasion, in violation of 26 U.S.C. § 7201 (Count Nine); and conspiring to commit money laundering, in violation of 18 U.S.C. § 1956(h) (Count Ten).

3. The defendant has read and fully understands the charges contained in the superseding indictment and fully understands the nature and elements of the crimes with which he has been charged. Further, these charges and the terms and conditions of the plea agreement have been fully explained to the defendant by his attorney.

4. The defendant voluntarily agrees to plead guilty to the charges contained in Counts Nine and Ten of the superseding indictment, which charge him with tax evasion (Count Nine) and conspiring to commit money laundering (Count Ten).

5. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offenses charged in Counts Nine and Ten. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt:

During the period from the early 1970s through approximately January, 2001, the defendant, Ronald A. Miserendino (herein referred to as "Miserendino") lived in Wisconsin. In 2001, Miserendino moved to Hawaii. In the early 1970s, Miserendino formed Trace Corporation ("Trace"), which was a Wisconsin corporation primarily engaged in the business of renting and developing real estate. Up until at least January 1, 2001, Miserendino was the president and 100% owner of Trace. As of January, 2001, the assets of Trace included a multi-unit apartment complex known as Estabrook Homes, located in Shorewood, Wisconsin, and ten U.S. Treasury bonds having a face value of \$10 million.

In addition, Trace was the 100% owner of Trace Maui Corporation ("Trace Maui"), which was incorporated in the State of Hawaii. Trace Maui was formed in 1995. As of January 1, 2001, the assets of Trace Maui included three pieces of real estate on the island of Maui. In approximately 1999, Trace Maui built a residence on one of the pieces of real estate. The other two lots remained vacant.

On June 18, 1979, Miserendino was married in Milwaukee, Wisconsin. On January 31, 2001, Miserendino's wife filed a Petition for Divorce in Milwaukee County Circuit Court. In connection with the divorce, Miserendino's wife sought a division of the couple's property, including the assets of Miserendino's businesses.

In connection with the divorce proceeding, on June 18, 2001, the divorce court stated that Trace's assets were frozen and precluded Miserendino from withdrawing assets from the corporation without the court's permission. Miserendino never sought and the divorce court never granted Miserendino permission to sell or otherwise dispose of the corporation's assets.

Mark V. Miserendino ("Mark") was Miserendino's adult son from a previous marriage. Sometime in 2001, Miserendino signed documents making Mark the president and owner of 49% of the stock of Trace. The government has located two versions of a consent resolution removing Miserendino as president; appointing him as vice-president; and appointing Mark as president. The first is signed by both Mark and Ronald Miserendino and is dated January 19, 2001. The second bears only the signature of Ronald Miserendino and is dated January 22, 2001.

During the pendency of his divorce, Miserendino engaged in a series of financial transactions to convert the assets to his own benefit and to the benefit of third parties and ultimately deprived his wife of access to and the benefit of these assets.

Firststar loans.

In February, 2001, Miserendino obtained a \$4.5 million loan in the name of Trace from Firststar Bank, which is now known as U.S. Bank. At the same time, Miserendino obtained a \$500,000 advance on Trace's line of credit at the bank. At all times, the deposits at Firststar Bank were insured by the federal government through the Federal Deposit Insurance Corporation ("FDIC"). Miserendino pledged the U.S. Treasury bonds owned by Trace to secure both the loan and the advance. To obtain these extensions of credit, Miserendino represented, among other things, that a purpose of the loan was to facilitate an offer on the purchase of an apartment complex. The bank documents signed by Miserendino to obtain these extensions of credit reflect that Miserendino was then the president of Trace. At Miserendino's direction,

Firstar disbursed the proceeds from these loans in the form of five bank checks, each in the amount of \$1 million, payable to Miserendino personally.

Beginning in August, 2001, Miserendino gave his son Mark three of the Firstar checks. At Miserendino's direction, Mark exchanged these \$1 million checks for smaller cashier's checks payable to Miserendino. Mark then sent the cashier's checks to Miserendino in Hawaii by commercial interstate carrier, such as Federal Express. These checks were deposited to bank accounts maintained by Miserendino in Hawaii and later withdrawn in cash.

U.S. Treasury Bonds

In July, 2001, Mark liquidated the Treasury bonds owned by Trace, according to Mark, at Miserendino's direction. These bonds had been pledged to Firstar to secure various loans, including the loan and advance obtained by Miserendino in February, 2001. The liquidation of Trace's bonds generated net proceeds, after paying Trace's obligations at Firstar, of approximately \$2,360,000.

At Mark's direction, Firstar disbursed the net proceeds in the form of cashier's checks, half of which were payable to Miserendino and half of which were payable to Mark, according to Mark and bank records. Mark sent the cashier's checks payable to Miserendino, which totaled approximately \$1,180,000, to Miserendino in Hawaii by overnight commercial carrier. Miserendino converted these checks to cash at various banks in Hawaii.

Mark converted the cashier's checks payable to him, which also totaled approximately \$1,180,000, into cash, according to Mark at Miserendino's direction. Mark claims he later delivered the cash to Miserendino.

Trace Maui real estate

On or about September 19, 2001, Miserendino sold one of the vacant lots belonging to Trace Maui. Miserendino received approximately \$203,500 from this sale and deposited it to a bank account he had opened in the name of Trace Maui. Miserendino then wired approximately \$101,000 from these proceeds to a bank account at Firstar. Miserendino withdrew the balance of the sale proceeds in cash.

show he brought into the United States approximately \$1.9 million in cash. This cash was proceeds from Miserendino's scheme described above.

Bank records reflect that during the period from December 2004 through March 2006, Alexeev and Czerwinski deposited more than \$541,000 in cash into various bank accounts they maintained in Oregon and Hawaii.

According to bank documents and a loan application, in April 2005, Alexeev and Czerwinski used approximately \$145,000, which they had previously deposited to their bank accounts in cash, to purchase a residence at 11143 NW Ridgeview Place, North Plains, Oregon.

According to bank records and documents obtained from the Oregon Department of Motor Vehicles, in December 2005, Alexeev used approximately, \$41,000, which had been previously deposited to Alexeev's bank account in cash, to purchase a 2006 Chevrolet Tahoe.

According to bank records, in December 2005, Alexeev opened a new bank account and deposited \$100,000 in cash into the account. According to bank records, this money was used to fund a check in the amount of \$100,000, which was dated December 27, 2005 and payable to a law firm representing Miserendino. These funds consisted of proceeds from Miserendino's scheme described above.

On December 28, 2005, Alexeev traveled to Milwaukee and testified at a hearing involving Miserendino. During this hearing, Alexeev testified that he had never given Miserendino any significant amount of money and that Miserendino had never given him or Czerwinski more than \$500.

According to bank records, on December 29, 2005, Czerwinski used approximately \$55,000, which she previously had deposited to her bank account in cash, to pay off the mortgage on the residence she and Alexeev maintained in North Plains, Oregon.

According to bank records, in March 2006, Alexeev deposited another \$100,000 in cash into his bank account. These funds consisted of proceeds from Miserendino's scheme described above. According to bank records, this money was used to fund a check in the amount of \$100,000, which was dated March 22, 2006, and payable to a law firm representing Miserendino.

According to bank records, during the period from November 2005 through March 2006, Alexeev purchased a series of certificates of deposit ("CDs") using cash. These transactions culminated in Alexeev's purchase of a CD in the amount of \$100,000 on March 17, 2006.

PENALTIES

6. The parties understand and agree that the offenses to which the defendant will enter a plea of guilty carry the following maximum term of imprisonment and fine: Count Nine (tax evasion), five (5) years and \$250,000; and Count Ten (money laundering conspiracy), twenty (20) years and \$500,000. Each charge also carries a mandatory special assessment of \$100 and a maximum term of supervised release to follow any term of confinement of up to three years.

7. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes, as well as the applicable sentencing guidelines, with his attorney.

ELEMENTS

8. The parties understand and agree that in order to sustain the charge of tax evasion, in violation of 26 U.S.C. § 7201, as set forth in Count Nine of the superseding indictment, the government must prove each of the following propositions beyond a reasonable doubt:

First, on April 15, or date of a legal extension, of the year following the tax year, federal income tax was due and owing by the defendant;

Second, the defendant intended to evade or defeat the ascertainment, assessment, computation or payment of the tax; and

Third, the defendant willfully did some act in furtherance of the intent to evade the tax or payment of the tax.

In November, 2001, Miserendino transferred the two remaining pieces of real estate owned by Trace Maui to his then-girlfriend, Larissa Ferrer, for \$10 each. The vacant lot was then sold. The proceeds from this sale, which totaled approximately \$190,300, were deposited to the Trace Maui account and then withdrawn by Miserendino in cash.

2001 federal tax return

Miserendino timely filed with the Internal Revenue Service (“IRS”) an individual income tax return (Form 1040) for the year 2001. The return is treated as having been filed with the IRS on April 15, 2002. On this return, which was signed by Miserendino under the penalties of perjury, Miserendino stated that he had taxable income for 2001 of \$4,312,599 and that the amount of tax due and owing thereon was \$1,672,248.

On this return, Miserendino did not report as income his receipt of some or all of the proceeds from various transactions in 2001 involving Trace, including approximately \$600,000 from the loan and advance on Trace’s line of credit from U.S. Bank (formerly known as Firststar Bank) in February 2001; the net proceeds from the liquidation of the Treasury bonds owned by Trace; and the proceeds from the sale of real estate belong to Trace Maui. Failure to report these loans and revenue as additional income amounted to an attempt to postpone additional taxes owing by Miserendino for the year 2001, which the government has calculated to be more than \$400,000 but less than \$1 million. To date, Miserendino has not reported his receipt of these proceeds as income on tax returns filed with the IRS or paid any associated federal income taxes.

Money laundering

On a number of occasions during 2002 and 2003, Miserendino traveled from the United States to Australia where he opened accounts and leased safe deposit boxes at various banks. On these trips, Miserendino transported proceeds from his activities described above and placed a portion of these proceeds, which were in cash, into safe deposit boxes.

In November and December 2004, and at Miserendino’s request, Boris Alexeev, who is the brother of Larissa Ferrer, traveled from Portland, Oregon, to Australia on at least three occasions. When Alexeev returned to the United States on these trips, currency declarations made to the U.S. Customs Service

9. The parties understand and agree that in order to sustain the charge of conspiring to commit money laundering, in violation of 18 U.S.C. § 1956(h), as set forth in Count Ten of the superseding indictment, the government must prove each of the following propositions beyond a reasonable doubt:

First, that the conspiracy to commit money laundering as charged in Count Ten of the superseding indictment existed; and

Second, that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy.

SENTENCING PROVISIONS

10. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

11. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the sentencing guidelines when sentencing the defendant.

12. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offenses charged in Counts Nine and Ten of the superseding indictment. The defendant acknowledges and agrees that his attorney, in turn, has discussed the applicable sentencing guidelines provisions with him to the defendant's satisfaction.

13. The parties acknowledge and understand that, prior to sentencing, the United States Probation Office will conduct its own investigation of the defendant's criminal history. The parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw his guilty pleas solely as a result of the sentencing court's determination of defendant's criminal history.

Sentencing Guidelines Calculations

14. The parties acknowledge, understand, and agree that the sentencing guidelines calculations included in this agreement represent the positions of the parties on the appropriate sentence range under the sentencing guidelines. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

Relevant Conduct

15. The parties acknowledge, understand, and agree that, pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in

calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offenses to which defendant is pleading guilty.

16. The parties acknowledge, understand, and agree that, with respect to the charge of tax evasion charged in Count Nine of the superseding indictment, pursuant to Sentencing Guidelines Manual §§ 2T1.1 and 1B1.3(a)(2), the sentencing court will consider all conduct violating the tax laws unless the evidence demonstrates that the conduct is clearly unrelated, even if the relevant conduct is not the subject of the offenses to which defendant is pleading guilty, and will use the total amount in calculating the sentencing guidelines range.

17. The parties agree to recommend to the sentencing court that the tax loss associated with the defendant's criminal conduct is more than \$400,000 but less than \$1,000,000.

18. The parties further agree to recommend to the sentencing court that the loss amount associated with the defendant's fraud scheme, as charged in Counts One through Eight of the superseding indictment, the proceeds of which are the subject of the conspiracy to commit money laundering charged in Count Ten, is more than \$2.5 million but less than \$7 million.

Base Offense Level

19. The parties agree to recommend to the sentencing court, based on their position that the tax loss associated with the defendant's tax offense is more than \$400,000 but less than \$1,000,000, that the applicable base offense level for the offense charged in

Count Nine (tax evasion) is 20, as determined under Sentencing Guidelines Manual § 2T4.1(H).

20. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in Count Ten (conspiracy to commit money laundering) is 25, as determined under Sentencing Guidelines Manual §§ 2S1.1(a)(1) and 2B1.1.

Specific Offense Characteristics

21. The parties acknowledge that the government intends to recommend to the sentencing court that a 2-level increase under Sentencing Guidelines Manual § 2T1.1(b)(1) is applicable to the offense level for the offense charged in Count Nine because the defendant failed to report income exceeding \$10,000 in any year from criminal activity (the defendant's fraud scheme charged in Counts One through Eight).

22. The parties agree to recommend to the sentencing court that, pursuant to § 2S1.1(b)(2)(B), the defendant's offense level for the offense charged in Count Ten should be increased 2 levels.

Acceptance of Responsibility

23. The government agrees to recommend a two-level decrease for acceptance of responsibility, as authorized by Sentencing Guidelines Manual § 3E1.1(a), and an additional one-level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b), as long as the defendant continues to exhibit conduct consistent with the acceptance of responsibility.

Sentencing Recommendations

24. Both parties reserve the right to apprise the district court and the probation office of any and all information that might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offenses, as well as any and all matters that might constitute aggravating or mitigating sentencing factors.

25. The parties agree that, in the absence of a motion by the government under § 5K1.1 indicating that the defendant has provided substantial assistance to the government, they will jointly recommend to the sentencing court that, based on all of the considerations set forth on 18 U.S.C. § 3553(a), the defendant should be sentenced to imprisonment for a period of four (4) years. Both parties reserve the right to make any recommendation regarding the fine to be imposed and any other matters not otherwise specifically addressed by this agreement.

Court's Determinations at Sentencing

26. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 6 above. The parties further understand that the sentencing court will be guided by the sentencing guidelines but will not be bound by the

sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

27. The parties acknowledge, understand, and agree that the defendant may not move to withdraw his guilty pleas solely as a result of the sentence imposed by the court.

FINANCIAL MATTERS

28. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable upon entry of the judgment of conviction. The defendant agrees not to request any delay or stay in payment of any and all financial obligations.

Special Assessment

29. The defendant agrees to pay the special assessments in the amount of \$200.

Forfeiture

30. The defendant agrees that the properties listed in the Second Forfeiture Notice of the superseding indictment, including the properties added to the Second Forfeiture Notice by the Bills of Particulars for Forfeiture of Property filed in this case, are subject to forfeiture to the United States as property involved in the conspiracy to commit money laundering charged in Count Ten of the Superseding Indictment or as substitute assets for property involved in such offense that cannot be located or are otherwise not available for forfeiture. The defendant agrees to the forfeiture of these properties, except the funds in the accounts and safe deposit boxes at three banks located in Australia that were added to the Second

Forfeiture Notice by the Third Bill of Particulars filed in this case, and to the immediate entry of a preliminary order of forfeiture of all of the other property listed as subject to forfeiture. The defendant agrees that he has an interest in each of the listed properties. A list of these properties is attached to this plea agreement as Attachment A.

31. The defendant further agrees to pay sufficient funds, up to a maximum of \$750,000, to his former wife, Cynthia Son, so that the total value of property ultimately forfeited to the United States pursuant to paragraph 30 above, which will be available for remission to Ms. Son (including any property obtained by the government based on information provided as a result of the defendant's cooperation), plus any funds paid to Son by Trace Corporation and the funds paid by the defendant to Ms. Son equals \$2,175,000. Pursuant to separate settlement agreements, Ms. Son and the Trace Corporation, which are alleged to be victims of the defendant's fraud, have agreed to resolve their outstanding claims against the defendant based on the defendant's agreement to forfeit property and payment of additional funds. In connection with these agreements, the government agrees, upon request, to inform the defendant, Ms. Son, Trace Corporation and the Escrow Agent under their settlement agreement, in writing of the total value of property remitted to Ms. Son by the government.

32. The government agrees that, after the defendant has pleaded guilty in this case, it will move to lift the post-indictment restraining order restricting the defendant's access to and use of funds held in accounts and safe deposit boxes at banks in Australia, which order

was entered in this case on November 29, 2006, to permit the defendant and his attorney to access those funds to make the payment described above in paragraph 31. The government further agrees that, after the defendant has made the payment described above in paragraph 31, it will dismiss those provisions of the Second Forfeiture Notice added by the Third Bill of Particulars filed in this case pertaining to funds in accounts and safe deposit boxes at three banks located in Australia and release those funds to the defendant.

33. The defendant agrees not to assist any other individual in asserting a claim to or otherwise contesting the forfeiture of the properties listed in the Second Forfeiture Notice of the superseding indictment, including the properties added to the Second Forfeiture Notice by the Bills of Particulars for Forfeiture of Property filed in this case. The defendant further agrees to provide truthful testimony to rebut the claims of any nominees and/or alleged third party owners of these properties, if necessary. The defendant further agree to take all steps necessary and to execute any document needed, to transfer ownership of these properties to the United States of America, prior to his sentencing.

DEFENDANT'S COOPERATION

34. The defendant, by entering into this agreement, further agrees to fully and completely cooperate with the government in its investigation and prosecution of this and related matters, and to testify truthfully and completely before the grand jury and at any subsequent trials or proceedings, if asked to do so. The government agrees to advise the sentencing judge of the nature and extent of the defendant's cooperation. The parties

acknowledge, understand, and agree that if the defendant provides substantial assistance to the government in the investigation or prosecution of others, only the government, in its discretion, may move for and recommend a downward departure from the applicable sentencing guidelines range. The defendant acknowledges and understands that the court will make its own determination with regard to the appropriateness and extent of a downward departure.

DEFENDANT'S WAIVER OF RIGHTS

35. In entering this agreement, the defendant acknowledges and understands that in so doing he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.
- b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.
- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.

- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his own behalf. The defendant would be entitled to compulsory process to call witnesses.
- e. At such 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 on his own behalf.

36. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights.

37. The defendant acknowledges and understands that he will be adjudicated guilty of the offenses to which he will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

38. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

Further Civil or Administrative Action

39. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorneys and understands that nothing contained in this agreement is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

GENERAL MATTERS

40. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

41. The parties acknowledge, understand, and agree that this plea agreement will be filed and become part of the public record in this case.

42. The parties acknowledge, understand, and agree that the United States Attorney's office is free to notify any local, state, or federal agency of his conviction.

Further Action by Internal Revenue Service

43. Nothing in this agreement shall be construed so as to limit the Internal Revenue Service in discharging its responsibilities in connection with the collection of any additional tax, interest, and penalties due from the defendant as a result of the defendant's conduct giving rise to the charge alleged in the indictment.

44. The defendant agrees to transmit any original records, or copies thereof, which he has in his possession or under his control, to the Examination Division of the Internal Revenue Service should the Examination Division of the Internal Revenue Service make a request as part of a civil audit of the defendant. The defendant agrees to provide, upon request, any additional books and records of his that he has in his possession or under his control which may be helpful to the Examination Division of the Internal Revenue Service should it conduct a civil audit of defendant and his wife. Nothing in this agreement shall be construed so as to limit the defendant from asserting any legitimate argument or defense in connection with any civil audit or effort by the Examination Division of the Internal Revenue Service to collect tax, interest or penalties from defendant

EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT

45. The defendant acknowledges and understands if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. The defendant further acknowledges and understands that the government's agreement to dismiss any charge is conditional upon final resolution of this matter. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to reinstate any and all dismissed charges and to file any and all charges that were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant

understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.

VOLUNTARINESS OF DEFENDANT'S PLEA

46. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

ACKNOWLEDGMENTS

I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

Date: MAY 21 07



RONALD A. MISERENDINO
Defendant

I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: May 22, 2007



JONATHAN L. MARKS
Attorney for Defendant


For the United States of America:

Date: May 22, 2007



STEVEN M. BISKUPIC
United States Attorney

Date: May 22, 2007



MATTHEW L. JACOBS
Assistant United States Attorney

United States v. Ronald Miserendino et al
Case No. 05-CR-311

ATTACHMENT A to Plea Agreement

| Property subject to Forfeiture per Second Forfeiture Notice in Superseding Indictment | |
|--|---|
| <u>Property listed in Second Forfeiture Notice of Superseding Indictment</u> | |
| 1 | Certain real property commonly known as 11143 NW Ridgeview Place, North Plains, Oregon. |
| 2 | One 2006 Chevrolet Tahoe K1500, tan in color, bearing vehicle identification number 1GNEK13T16R167085, with Oregon license plate 919CEH, registered to Boris Alexeen. |
| 3 | All funds in account number 004850893858 at Bank of America, Hillsboro, Oregon. |
| 4 | All funds in account number 004542143476 at Bank of America, Hillsboro, Oregon. |
| 5 | All funds in account number 91000068024558 at Bank of America, Hillsboro, Oregon. |
| 6 | All funds in account number 008761606283 at Bank of America, Hillsboro, Oregon. |
| 7 | All funds in account number 16077008 at Maui County Employees Federal Credit Union, Maui, Hawaii. |
| <u>Property added to Second Forfeiture Notice by First Bill of Particulars</u> | |
| 1 | Approximately \$41,153.00 in currency and coin seized on April 6, 2006, from 11143 NW Ridgeview Place, North Plains, Oregon |
| 2 | One man's Breguet Transatlantic Type XXI watch, model 3810ST92SZ9, serial number 74067, seized on April 6, 2006, from 11143 NW Ridgeview Place, North Plains, Oregon |
| 3 | One man's Maurice Lacroix 18K gold Calendrier Retrograde watch, ML76, serial number AF82552, April 6, 2006, from 11143 NW Ridgeview Place, North Plains, Oregon. |
| <u>Property added to Second Forfeiture Notice by Second Bill of Particulars</u> | |
| 1 | \$1,707.83 in currency and coin seized from Miserendino's person at the time of his arrest in the State of Oregon on November 11, 2005. |
| 2 | \$60,000 in currency seized on December 7, 2005, from safe deposit box number 601 at a branch of First California Bank located in Westlake Village, California |
| 3 | \$270,000 in currency seized on December 6, 2005, from safe deposit box number 01308 at a branch of Rabobank, which was formerly known as Valley Independence Bank, located in Palm Springs, California |
| 4 | \$300,000 in currency seized on December 5, 2005, from safe deposit box number 210 at a branch of UMPQUA Bank located in Beaverton, Oregon |

| Property subject to Forfeiture per Second Forfeiture Notice in Superseding Indictment | |
|--|---|
| 5 | \$270,000 in currency seized on December 5, 2005, from safe deposit box number 40150 at a branch of Wells Fargo Bank located in Las Vegas, Nevada. |
| 6 | \$120,000 in currency seized on December 6, 2005, from safe deposit box number 161 at a branch of Bank of America, located in Phoenix, Arizona |
| 7 | \$150,000 in currency seized on December 6, 2005, from safe deposit box number 5017 at a branch of Evergreen Bank, located in Lynnwood, Washington. |
| 8 | All funds in account number 2322641 at First California Bank, Westlake Village, California |
| 9 | All funds in account number 0013120900 at Rabobank, which was formerly known as Valley Independence Bank, Palm Springs, California |
| 10 | All funds in account number 320005556 at UMPQUA Bank, Beaverton, Oregon |
| 11 | All funds in account number 0046-5940-7513 at Bank of America, Phoenix, Arizona. |
| 12 | All funds in account number 021-001634-1 at Evergreen Bank, located in Lynnwood, Washington. |
| 13 | All funds in account number 273-0374663 at Wells Fargo Bank, Las Vegas, Nevada. |
| Property added to Second Forfeiture Notice by Third Bill of Particulars) | |
| 7 | \$1000 in currency seized on June 13, 2006, from safe deposit box no. 245 at Central Pacific Bank, 207 Piikea Avenue, Kihei, Hawaii. |