

Judge Ricardo S. Martinez

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OCT 05 2009

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERTO CITTADINI,

Defendant.

NO. CR09-344RSM

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Michael J. Watling, Trial Attorney for the United States Department of Justice Tax Division, and Defendant, Roberto Cittadini, and his attorney, John Colvin, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

2. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charge contained in the Information.

a. Willfully Filing a False Tax Return, as charged in Count 1, in violation of Title 26, United States Code, Section 7206(1).

1 By entering this plea of guilty, Defendant hereby waives all objections to the form of the
2 charging document. Defendant further understands that before entering his plea of guilty,
3 Defendant will be placed under oath. Any statement given by Defendant under oath may
4 be used by the United States in a prosecution for perjury or false statement.

5 3. Elements of the Offense. The elements of the offense of Willfully Filing a
6 False Tax Return, as charged in Count One, in violation of Title 26, United States Code,
7 Section 7206(1), are as follows:

8 First, the defendant made and signed a tax return for the year 2002 that he
9 knew contained false information as to a material matter; and,

10 Second, the return contained a written declaration that it was being signed
11 subject to the penalties of perjury;

12 Third, in filing the false tax return, the defendant acted willfully.

13 4. The Penalties. Defendant understands that the statutory penalties for the
14 offense of Willfully Filing a False Tax Return, as charged in Count One are as follows:

15 Imprisonment for up to three (3) years, a fine of up to two hundred and fifty
16 thousand dollars (\$250,000.00), a period of supervision following release from prison of
17 up to one (1) year, and a one hundred dollar (\$100.00) special assessment. If Defendant
18 receives a sentence of probation, the probationary period could be up to five (5) years.

19 Defendant agrees that the special assessment shall be paid at or before the time of
20 sentencing.

21 Defendant understands that supervised release is a period of time following
22 imprisonment during which he will be subject to certain restrictions and requirements.
23 Defendant further understands that if supervised release is imposed and he violates one or
24 more of its conditions, he could be returned to prison for all or part of the term of
25 supervised release that was originally imposed. This could result in Defendant serving a
26 total term of imprisonment greater than the statutory maximum stated above.

1 Defendant further understands that a consequence of pleading guilty may include
2 the forfeiture of certain property either as a part of the sentence imposed by the Court, or
3 as a result of civil judicial or administrative process.

4 Defendant agrees that any monetary penalty the Court imposes, including the
5 special assessment, fine, costs or restitution, is due and payable immediately, and further
6 agrees to submit a completed Financial Statement of Debtor form as requested by the
7 United States Attorney's Office.

8 5. Rights Waived by Pleading Guilty. Defendant understands that by pleading
9 guilty, he knowingly and voluntarily waives the following rights:

- 10 a. The right to plead not guilty and to persist in a plea of not guilty;
- 11 b. The right to a speedy and public trial before a jury of his peers;
- 12 c. The right to the effective assistance of counsel at trial, including, if
13 Defendant could not afford an attorney, the right to have the Court appoint one for
14 Defendant;
- 15 d. The right to be presumed innocent until guilt has been established
16 beyond a reasonable doubt at trial;
- 17 e. The right to confront and cross-examine witnesses against Defendant
18 at trial;
- 19 f. The right to compel or subpoena witnesses to appear on his behalf at
20 trial;
- 21 g. The right to testify or to remain silent at trial, at which trial such
22 silence could not be used against Defendant; and
- 23 h. The right to appeal a finding of guilt or any pretrial rulings.

24 6. United States Sentencing Guidelines. Defendant understands and
25 acknowledges that, at sentencing, the Court must consider the sentencing range calculated
26 under the United States Sentencing Guidelines, together with the other factors set forth in
27 Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances
28 of the offense; (2) the history and characteristics of the defendant; (3) the need for the

1 sentence to reflect the seriousness of the offense, to promote respect for the law, and to
2 provide just punishment for the offense; (4) the need for the sentence to afford adequate
3 deterrence to criminal conduct; (5) the need for the sentence to protect the public from
4 further crimes of the defendant; (6) the need to provide the defendant with educational and
5 vocational training, medical care, or other correctional treatment in the most effective
6 manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims;
7 and (9) the need to avoid unwarranted sentence disparity among defendants involved in
8 similar conduct who have similar records. Accordingly, Defendant understands and
9 acknowledges that:

10 a. The Court will determine his applicable Sentencing Guidelines range
11 at the time of sentencing;

12 b. After consideration of the Sentencing Guidelines and the factors in
13 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
14 maximum term authorized by law;

15 c. The Court is not bound by any recommendation regarding the
16 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
17 range offered by the parties or the United States Probation Department, or by any
18 stipulations or agreements between the parties in this Plea Agreement; and

19 d. Defendant may not withdraw a guilty plea solely because of the
20 sentence imposed by the Court.

21 7. Ultimate Sentence. Defendant acknowledges that no one has promised or
22 guaranteed what sentence the Court will impose.

23 8. Statement of Facts. The parties agree on the following facts.

24 a. Obligation to Report Worldwide Income and Foreign Bank Accounts

25 i. United States citizens who have income in excess of a certain
26 amount are obligated to file a federal income tax return. On said return, United States
27 citizens are obligated to report their worldwide income. Additionally, United States
28 citizens who have an interest in or a signature or other authority over a financial account in

1 a foreign country with assets in excess of \$10,000 are required to disclose the existence of
2 such account and the country in which it is located on Schedule B, Part III of their
3 individual income tax return.

4 b. UBS Accounts

5 i. On or about September 16, 1991, the defendant opened a bank
6 account at UBS AG in Zurich, Switzerland, for the purpose of investing monies he
7 received from his family in Argentina. Throughout the nineteen nineties and into the two
8 thousands the defendant made annual trips to Zurich, Switzerland, to meet with UBS
9 bankers and discuss investment strategies related to his UBS bank account.

10 ii. In about 2000, pursuant to a Qualified Intermediary Agreement
11 with the Internal Revenue Service, UBS was required to withhold taxes from, and report to
12 the IRS, all UBS accounts owned by United States citizens that held United States-based
13 securities. In order to evade these requirements, and at the suggestion of UBS banker
14 Hansruedi Schumaker, the defendant formed a Hong Kong corporation named Mataropa
15 Finance Limited, and named Swiss lawyers A. M. R. and Matthias Walter Rickenbach as
16 its First Directors.

17 iii. On May 18, 2001, the defendant authorized UBS to transfer all
18 assets from his UBS account to a newly opened UBS account in the name of Mataropa
19 Finance Limited. According to records obtained from UBS AG in Switzerland, the
20 defendant is the beneficial owner of the assets held in the account opened in the name of
21 Mataropa Finance Limited. After transferring his assets to the Mataropa Finance Limited
22 UBS account, the defendant continued to meet and discuss investment strategies with UBS
23 bankers in Switzerland, including Hansruedi Schumaker.

24 iv. In or about 2002, UBS banker P.B. contacted the defendant by
25 telephone and arranged to meet with the defendant in Seattle, Washington. Later in 2002
26 the defendant met with UBS banker P.B. at a hotel in Seattle, Washington, and reviewed
27 account statements and discussed investment strategies concerning the assets in the
28 defendant's Mataropa Finance Limited UBS account.

1 v. As of December 31, 2001, the total value of assets in the
2 defendant's Mataropa Financial Limited UBS account was \$1,857,308. As of December
3 31, 2002, the total value of assets in the defendant's Mataropa Finance Limited UBS
4 account was \$1,686,993.

5 c. Tax Return Information

6 i. For tax years 2001 through 2003, the defendant was required
7 to file a United States tax return, to report his worldwide income, and to declare the
8 existence of any foreign based financial account in which he had an interest or over which
9 he had signature or other authority that contained assets in excess of \$10,000.

10 ii. The defendant prepared and filed an individual tax return with
11 the Internal Revenue Service for tax years 2001 through 2003. Each year, the defendant
12 willfully failed to report on these tax returns any income earned on his UBS bank
13 accounts. Additionally, each year, the defendant failed to disclose that he had an interest
14 in or a signature or other authority over a financial account in a foreign country.

15 iii. Specifically, on April 15, 2003, the defendant prepared and
16 filed a U.S. Individual Income Tax Return Form 1040 for tax year 2002, listing the same
17 address contained on the UBS record identifying the beneficial owner of the Mataropa
18 Finance Limited account. The return was electronically filed with a declaration page that
19 states that all of the information contained on the return and accompanying schedules was
20 furnished by the defendant and that the return and accompanying schedules and statements
21 were examined by the defendant and that to the best of the defendant's knowledge and
22 belief, the return and accompanying schedules and statements were true, correct, and
23 complete.

24 iv. On Schedule B, Part III of the defendant's 2002 tax return, the
25 defendant failed to report that he had an interest in or a signature authority over a financial
26 account at UBS in Switzerland and he failed to report income earned on his UBS Swiss
27 bank account.

1 v. When the defendant filed his U.S. Individual Income Tax
2 Return Form 1040 for tax years 2001 through 2003, he knew he was obligated to report the
3 income earned on his UBS bank accounts on line 22 of said tax return and that he should
4 have disclosed the existence of the UBS account on Schedule B, Part III.

5 9. Sentencing Factors.

6 The parties agree that the following Sentencing Guidelines provisions apply to this
7 case:

8 a. Tax Loss: The relevant amount of actual, probable, or intended tax
9 loss under USSG § 2T1.1 resulting from the offence committed in this case and all
10 relevant conduct is the tax loss associated with the accounts at UBS that were disclosed to
11 the Government pursuant to the Deferred Prosecution Agreement with UBS, and of which
12 the defendant was the beneficial owner for the tax years 2001 through 2003.

13 b. A two-point increase to the base offense level for use of sophisticated
14 means, pursuant to USSG § 2T1.1(b)(2);

15 The parties agree they are free to argue the application of any other
16 provisions of the United States Sentencing Guidelines. Defendant understands, however,
17 that at the time of sentencing, the Court is free to reject these stipulated adjustments, and is
18 further free to apply additional downward or upward adjustments in determining his
19 Sentencing Guidelines range.

20 10. Cooperation

21 a. The defendant shall cooperate completely and truthfully with law
22 enforcement authorities in the investigation and prosecution of other individuals involved
23 in criminal activity. Such cooperation shall include, but not be limited to, complete and
24 truthful statements to law enforcement officers, as well as complete and truthful testimony,
25 if called as a witness before a grand jury, or at any state or federal trial, retrial, or other
26 judicial proceedings. The defendant acknowledges that this obligation to cooperate shall
27 continue after Defendant has entered a guilty plea and sentence has been imposed, no
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1 matter what sentence Defendant receives. Defendant's failure to do so may constitute a
2 breach of this Plea Agreement.

3 b. Defendant understands that the United States will tolerate no
4 deception from him. If, in the estimation of the United States Attorney or the United
5 States Department of Justice Tax Division, information or testimony provided from the
6 date of the Plea Agreement proves to be untruthful or incomplete in any way, regardless of
7 whether the untruthfulness helps or hurts the United States' case, the United States may
8 consider that Defendant has breached this Plea Agreement.

9 c. The United States Attorney's Office for the Western District of
10 Washington and the United States Department of Justice Tax Division, in turn, agree not
11 to prosecute Defendant for any other offenses that Defendant may have committed prior to
12 the date of this Plea Agreement about which the Government presently possesses
13 information, or about which Defendant provides information pursuant to this Plea
14 Agreement to cooperate with the authorities.

15 d. The parties agree that information provided by Defendant in
16 connection with this Plea Agreement shall not be used to determine Defendant's sentence,
17 except to the extent permitted by USSG § 1B1.8.

18 e. In exchange for Defendant's cooperation, as described above, and
19 conditioned upon Defendant's fulfillment of all conditions of this Plea Agreement, the
20 United States Attorney and the United States Department of Justice Tax Division agree to
21 consider filing a motion, pursuant to USSG § 5K1.1, providing for a departure from the
22 otherwise applicable Sentencing Guideline range.

23 f. Defendant agrees that his sentencing date may be delayed based on
24 the United States' need for his continued cooperation, and agrees not to object to any
25 continuances of his sentencing date sought by the United States.

1 11. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
2 the United States Attorney's Office for the Western District of Washington and the United
3 States Department of Justice Tax Division agree not to prosecute Defendant for any
4 additional offenses known to it as of the time of this Agreement that are based upon
5 evidence in its possession at this time, and that arise out of the conduct giving rise to this
6 investigation. In this regard, Defendant recognizes the United States has agreed not to
7 prosecute all of the criminal charges the evidence establishes were committed by
8 Defendant solely because of the promises made by Defendant in this Agreement.

9 12. Acceptance of Responsibility. The United States agrees that it will
10 recommend at sentencing that the court reduce by two levels the Sentencing Guidelines
11 level applicable to the defendant's offense, pursuant to USSG § 3E1.1(a), based upon the
12 defendant's recognition and affirmative and timely acceptance of personal responsibility.
13 If at the time of sentencing the defendant's offense level is determined to be 16 or grater,
14 the United States will make a motion requesting an additional one level decrease, pursuant
15 to USSG § 3E1.1(b), stating that the defendant has assisted authorities in the investigation
16 or prosecution of his own misconduct by timely notifying authorities of his intention to
17 enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and
18 permitting the United States and the court to allocate their resources efficiently.

19 13. Cooperation with the Internal Revenue Service ("IRS").

20 a. The defendant agrees to cooperate with the Internal Revenue Service
21 ("IRS") in its civil examination, determination, assessment, and collection of income taxes
22 related to his income tax returns and any related corporate/entity tax returns, and further
23 agrees not to conceal, or transfer for no consideration any funds or property that could be
24 used to satisfy such taxes, penalties, and interest. The defendant agrees to provide the IRS
25 any documentation in the defendant's possession and/or control requested by the IRS in
26 connection with its civil examination, determination, assessment, and collection of such
27 income taxes prior to sentencing.

1 b. The defendant also agrees to work diligently with the Internal
2 Revenue Service to resolve the liability for all taxes, interest, and penalties due and owing
3 to the IRS, including all taxes, interest, and penalties on his individual and any related
4 corporate/entity liabilities. Nothing in this agreement shall limit the IRS in its civil
5 determination, assessment, and collection of any taxes, additions to tax pursuant to
6 Subchapter 68B of the Internal Revenue Code, or interest that the defendant may owe.

7 c. The defendant further agrees that any evidence, including statements
8 and documents, provided to the United States by the defendant pursuant to a Proffer
9 Agreement, without any limitations, can be utilized by the United States in its civil
10 examination, determination, assessment, and collection of income taxes related to his
11 income tax returns and any related corporate/entity tax returns, or any other civil
12 proceeding.

13 d. The defendant further agrees that in order to resolve his civil liability
14 for failing to file Reports of Foreign Bank and Financial Accounts, Forms TD F 90-22.1,
15 for tax years 2001 through 2008, he will pay a fifty percent penalty for the one year with
16 the highest balance in the account as of June 30 for calendar years 2001 through 2008.

17 14. Breach, Waiver, and Post-Plea Conduct. Defendant agrees that if he
18 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement
19 and Defendant may be prosecuted for all offenses for which the United States has
20 evidence. Defendant agrees not to oppose any steps taken by the United States to nullify
21 this Plea Agreement, including the filing of a motion to withdraw from the Plea
22 Agreement. Defendant also agrees that if he is in breach of this Plea Agreement,
23 Defendant has waived any objection to the reinstatement of any charges that were
24 previously dismissed or any additional charges that had not been prosecuted.

25 Defendant further understands that if, after the date of this Agreement, he should
26 engage in illegal conduct, or conduct that is in violation of his conditions of his release
27 (examples of which include, but are not limited to: obstruction of justice, failure to appear
28 for a court proceeding, criminal conduct while pending sentencing, and false statements to

1 law enforcement agents, the Pretrial Services Officer, Probation Officer or Court), or is
2 found to have misrepresented the facts to the United States prior to entering this plea
3 agreement, the United States is free under this Agreement to file additional charges against
4 Defendant or to seek a sentence that takes such conduct into consideration. Such a
5 sentence could include a sentencing enhancement under the United States Sentencing
6 Guidelines or an upward departure from the applicable sentencing guidelines range.

7 15. Waiver of Appeal. As part of this Plea Agreement and on the condition that
8 the Court imposes a custodial sentence that is within or below the Sentencing Guidelines
9 range that is determined by the Court at the time of sentencing, Defendant waives to the
10 full extent of the law:

- 11 a. Any right conferred by Title 18, United States Code, Section 3742 to
12 appeal the sentence, including any restitution order imposed; and
13 b. Any right to bring a collateral attack against the conviction and
14 sentence, including any restitution order imposed, except as it may
15 relate to the effectiveness of legal representation.

16 Furthermore, this waiver does not preclude Defendant from bringing an appropriate
17 motion pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
18 decisions of the Bureau of Prisons regarding the execution of his sentence.

19 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
20 attacking (except as to effectiveness of legal representation) the conviction or sentence in
21 any way, the United States may prosecute Defendant for any counts, including those with
22 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
23 Agreement.

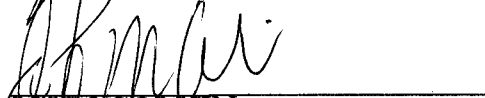
24 16. Voluntariness of Plea. Defendant agrees that he has entered into this Plea
25 Agreement freely and voluntarily, and that no threats or promises, other than the promises
26 contained in this Plea Agreement, were made to induce Defendant to enter this plea of
27 guilty.


1 17. Statute of Limitations. In the event this Agreement is not accepted by the
2 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
3 the statute of limitations shall be deemed to have been tolled from the date of the Plea
4 Agreement to: (1) 30 days following the date of non-acceptance of the Plea Agreement by
5 the Court; or (2) 30 days following the date on which a breach of the Plea Agreement by
6 Defendant is discovered by the United States Attorney's Office.

7 18. Completeness of Agreement. The United States and Defendant
8 acknowledge that these terms constitute the entire Plea Agreement between the parties.
9 This Agreement binds only the United States Attorney's Office for the Western District of
10 Washington and the United States Department of Justice Tax Division. It does not bind
11 any other United States Attorney's Office or any other office or agency of the United
12 States, or any state or local prosecutor.

13 Dated this 5 day of OCTOBER, 2009.

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15 
16 ROBERTO CITTADINI
Defendant

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19 JOHN COLVIN
Attorney for Defendant

20
21 
22 MICHAEL J. WATLING
Trial Attorney
United States Department of Justice
Tax Division