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U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

May 13, 2011

James Lawson, Esq.
Prince Lobel Glovsky & Tye, LLP
100 Cambridge Street, Suite 200
Boston, MA 02114

Re: United States v. Michael F. Schiavo

Dear Mr. Lawson:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts and the Tax Division of the United States Department of Department of Justice (the "United States") and your client, Michael F. Schiavo ("Defendant"), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall waive indictment and plead guilty to the Information attached to this Agreement charging him with one count of willfully violating foreign bank account reporting requirements, in violation of Title 31, U.S.C. Sections 5314 and 5322(a). Defendant expressly and unequivocally admits that he committed the crime charged in the Information, did so knowingly and willfully, and is in fact guilty of the offense.

2. Penalties

Defendant faces the following maximum penalties: five years imprisonment, a fine of the greater of \$250,000 or twice the gross gain or loss occasioned by the offense, three years supervised release, a one hundred dollar special assessment, and a civil money penalty pursuant to Title 31, U.S.C., § 5321(a)(5)(C) and (D) of \$76,283.

Defendant also recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, possibly including the offense to which Defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and Defendant understands that no one, including defense counsel or the District Court, can predict to a certainty the effect of this conviction on Defendant's immigration status. Defendant nevertheless affirms his decision to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is Defendant's automatic removal from the United States.

3. Sentencing Guidelines

The sentence to be imposed upon Defendant is within the discretion of the District Court ("Court"), subject to the statutory maximum penalties set forth above, and the provisions of the Sentencing Reform Act, and the United States Sentencing Guidelines ("USSG") promulgated thereunder. The Sentencing Guidelines are advisory, not mandatory and, as a result, the Court may impose a sentence up to and including the statutory maximum term of imprisonment and statutory maximum fine. In imposing the sentence, the Court must consult and take into account the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. §3553(a).

The parties agrees that the United States Sentencing Guidelines apply as follows:

- (i) in accordance with USSG §§ 2T1.1 and 2T4.1, Defendant's base offense level is 14, because the tax loss is \$40,624;
- (ii) in accordance with USSG § 2T1.1(b)(2), Defendant's offense level is increased by 2, because Defendant's offense involved sophisticated means;

In the event Defendant contends that there is a basis for departure from, or a sentence outside, the otherwise applicable Sentencing Guideline range based on his medical, mental and/or emotional condition, or otherwise intends to rely on any such condition at sentencing, Defendant will, forthwith upon request, execute all releases and other documentation necessary to permit the United States and its experts (including medical personnel of the Bureau of Prisons) to obtain access to Defendant's medical, psychiatric, and psychotherapeutic records and will also provide to the United States forthwith copies of any such records already in his possession. In addition, Defendant will authorize his care providers to discuss his condition with the United States and its agents (including medical personnel of the Bureau of Prisons), as well as experts retained by the United States. Defendant also agrees to submit to examinations and interviews with experts retained by and chosen by the United States (including medical personnel of the Bureau of Prisons).

Defendant reserves the right to argue for a departure or a sentence outside the Guidelines under the factors set forth in 18 U.S.C. §3553(a), and the government reserves the right to oppose such arguments.

Based on Defendant's prompt acceptance of personal responsibility for the offense of conviction in this case, and information known to the United States at this time, the United States agrees to recommend that the Court reduce by three levels Defendant's Adjusted Offense Level under USSG §3E1.1. Defendant's total offense level therefore would be 13.

The United States specifically reserves the right not to recommend a reduction under USSG §3E1.1 if, at any time between Defendant's execution of this Agreement and sentencing Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit his conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about his financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts which form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; or
- (j) Attempts to withdraw his guilty plea.

Defendant expressly understands that he may not withdraw his plea of guilty if, for any of the reasons listed above, the United States does not recommend that he receive a reduction in Offense Level for acceptance of responsibility.

Defendant expressly understands that, in addition to declining to recommend an acceptance-of-responsibility adjustment, the United States may seek an upward adjustment pursuant to USSG §3C1.1 if Defendant obstructs justice after date of this Agreement.

4. Sentence Recommendation

In the event the United States determines that Defendant has not provided substantial assistance pursuant to Paragraph 9, the United States agrees to recommend the following sentence before the Court:

- (a) incarceration at the low end of the Sentencing Guideline range as calculated by the Court;
- (b) no criminal fine;
- (c) mandatory special assessment in the amount of \$100;
- (d) twelve months of supervised release, with the special conditions that Defendant must, within six months of sentencing or release from custody, whichever is later:
 - (i) Cooperate with the Examination and Collection Divisions of the Internal Revenue Service;
 - (ii) Provide to the Examination Division all financial information necessary to determine Defendant's prior tax liabilities;
 - (iii) Provide to the Collection Division all financial information necessary to determine Defendant's ability to pay;
 - (iv) File accurate and complete tax returns for those years for which returns were not filed or for which inaccurate returns were filed, including Foreign Bank Account Reports; and
 - (v) Make a good faith effort to pay all delinquent and additional taxes, interest and penalties.

Defendant agrees to join in the government's recommendation that the conditions set forth in (d), above, be made special conditions of any period of probation or supervised release imposed by the Court. Defendant reserves the right, however, to contest the amount the IRS determines that he owes in additional taxes, penalties and interest.

Defendant further agrees that in order to completely resolve his civil liability for violating foreign bank account reporting requirements for tax years 2003 through 2008, he will pay the Internal Revenue Service a civil money penalty \$76,283.00 pursuant to Title 31, U.S.C., § 5321(a)(5)(A), which represents fifty percent of the highest year-end balance in the undisclosed accounts for calendar years 2003 through 2008.

Defendant further agrees that he will provide to the United States expert reports, motions, memoranda of law and documentation of any kind on which he intends to rely at sentencing not later than twenty-one days before sentencing. Any basis for sentencing with respect to which all expert reports, motions, memoranda of law and documentation have not been provided to the United States at least twenty-one days before sentencing shall be deemed waived.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

6. Protection of Assets for Payment of Restitution, Forfeiture and Fine

Defendant agrees not to transfer, or authorize the transfer of, any asset which has been restrained by Order of the Court in this case or any asset, whether or not restrained, which Defendant has agreed to forfeit pursuant to this Agreement.

Defendant agrees not to transfer, or authorize the transfer of any other asset in which he has an interest without prior express written consent of the United States, except for:

- (a) Assets subject to superior, secured interests of innocent third parties, in which Defendant has an equity interest of less than \$19,000;
- (b) Ordinary living expenses necessary to house, clothe, transport, educate and feed Defendant and those to whom he owes a legal duty of support, so long as such assets do not exceed \$24,000 per month; and
- (c) Attorney's fees incurred in connection with this criminal case.

This prohibition shall be effective as of the date of Defendant's execution of this Agreement and continue until the fine, forfeiture and restitution ordered by the Court at sentencing and any tax liability incurred as a result of the conduct charged in the Information are satisfied in full.

7. Waiver of Rights to Appeal and to Bring Collateral Challenge.

- (a) Defendant has conferred with his attorney and understands that he has the right to challenge both his conviction and his sentence on direct appeal. Defendant also understands that he may, in some circumstances, be able to argue that his conviction and/or sentence should be set aside or reduced in a collateral challenge, such as pursuant to a motion under 28 U.S.C. §2255 or 18 U.S.C. §3582(c).

- (b) Defendant waives any right he has to challenge his conviction on direct appeal or in collateral challenge.
- (c) Defendant agrees that, if the Court grants the United States's motion for a downward departure pursuant to either USSG §5K1.1 or 18 U.S.C. §3553(e) and does, in fact, depart downward on that basis, he will not file a direct appeal nor collaterally challenge any sentence imposed. If the Court does not downwardly depart pursuant to either USSG §5K1.1 or 18 U.S.C. §3553(e) Defendant also agrees not to file a direct appeal nor collaterally challenge any imprisonment sentence of eighteen months or less.
- (d) The United States likewise agrees that, regardless of the analysis employed by the Court, the United States will not appeal any imprisonment sentence of twelve months or more.

8. Other Post-sentence Events

- (a) In the event that notwithstanding the waiver provision of Paragraph 7(c), Defendant appeals or collaterally challenges his sentence, the United States reserves the right to argue the correctness of the sentence imposed by the Court (in addition to arguing that any appeal or collateral challenge is waived as a result of the waiver in Paragraph 7).
- (b) If notwithstanding the waiver provision of Paragraph 7(c), Defendant seeks re-sentencing, he agrees that he will not seek to be re-sentenced with the benefit of any change to the criminal history category that the Court calculated at the time of Defendant's original sentencing, except to the extent that he has been found actually factually innocent of a prior crime. Thus, for example, Defendant will not seek to be re-sentenced based on the set aside of a prior state-court conviction that occurs after sentencing unless he has been found actually factually innocent of that prior crime.
- (c) In the event of a re-sentencing following an appeal from or collateral challenge to Defendant's sentence, the United States reserves the right to seek a departure from the Sentencing Guidelines and a sentence outside the Sentencing Guidelines if, and to the extent, necessary to reinstate the sentence advocated by the United States at Defendant's initial sentencing pursuant to this Agreement.

9. Cooperation

- (a) Terms of Cooperation: Defendant agrees to cooperate fully with law enforcement agents and government attorneys. Defendant must provide complete and truthful information to all law enforcement personnel. If

Defendant's testimony is requested, he must testify truthfully and completely before any grand jury, and at any hearing and trial. Defendant must answer all questions put to him by any law enforcement agents or government attorneys and must not withhold any information. Defendant must not attempt to protect any person or entity through false information or omission, or to implicate falsely any person or entity. Upon request, Defendant must furnish all documents, objects and other evidence in Defendant's possession, custody or control that are relevant to the government's inquiries.

Defendant understands that he has a right to have counsel present when communicating with representatives of the government concerning the criminal conduct with which he has been charged. To facilitate his cooperation, Defendant hereby knowingly and voluntarily waives this right with respect to all debriefings by law enforcement agents and government attorneys and all appearances to testify. This waiver may be revoked at any time by a specific request by Defendant or his counsel without otherwise affecting the terms or enforceability of this Agreement.

To enable the Court to have the benefit of all relevant sentencing information, Defendant waives any rights he may have to prompt sentencing and will join in any requests by the United States that sentencing be postponed until Defendant's cooperation is complete. Defendant understands that the date of Defendant's sentencing is within the sole discretion of the Court and that this Agreement may require Defendant's cooperation to continue even after Defendant has been sentenced. Defendant's failure to continue to cooperate pursuant to the terms of this Agreement after sentence is imposed shall constitute a breach of this Agreement by Defendant.

- (b) Substantial Assistance Motion: In the event that Defendant provides substantial assistance in the investigation or prosecution of another person who has committed a criminal offense, the United States agrees that, at or before the time of sentencing, the United States will file a motion under USSG §5K1.1 to allow the Court to impose a sentence below the applicable Guideline Sentencing Range. Defendant understands that based on the information Defendant has provided to date, the government does not anticipate filing a motion under USSG § 5K1.1.

The determination whether Defendant has provided substantial assistance rests solely in the discretion of the United States and is not subject to appeal or review. This determination will be made based on the truthfulness and value of Defendant's assistance, regardless of the outcome or result of any proceeding or trial. The United States expressly reserves the right to decline to file a motion pursuant to USSG §5K1.1 if Defendant violates any condition of his pretrial release, violates any of the requirements of honesty

and candor detailed in Paragraph 9(a) above, or engages in any criminal conduct after the date he signs this Agreement. Defendant may not withdraw his plea if the United States determines that Defendant has not rendered substantial assistance, or if the Court refuses to grant the United States's motion for a downward departure.

- (c) Sentence Recommendation with Substantial Assistance: If Defendant provides substantial assistance, subject to all the provisions of Paragraphs 9(a) and 9(b) above, the United States will advise the Court of the full nature, extent and value of the assistance provided by Defendant. The United States reserves the right to recommend a particular sentence or sentencing range, or to make no recommendation at Defendant's sentencing.
- (d) Letter Immunity: In return for Defendant's full and truthful cooperation, the United States agrees not to use any information provided by Defendant pursuant to this Agreement (or any information directly or indirectly derived therefrom) against Defendant in any criminal case except in a prosecution: (1) for perjury or obstruction of justice, or for making a false statement after the date of this Agreement; or (2) for an act of physical violence against the person of another, or conspiracy to commit any such act of violence. The United States reserves the right to respond fully and completely to all requests for information by the Court and U.S. Probation Office in this case. All such disclosures, however, shall be made subject to the provisions constraining the use of this information by the Court and U.S. Probation Office contained in USSG §1B1.8(a) and the commentary thereto. Notwithstanding the provisions of USSG §1B1.8(b)(5) and the commentary thereto, the United States agrees to take the position that at the time of sentencing information provided by Defendant pursuant to this Agreement should not be used either in determining where within the applicable guideline range to sentence Defendant or in determining whether, or to what extent, a departure from the Sentencing Guidelines is warranted.

If the United States determines that Defendant has breached this Agreement by making any false, incomplete or misleading statement, or by providing any false, incomplete or misleading information to any law enforcement personnel, grand jury or court, the United States may terminate this Agreement as set forth below, and may also prosecute Defendant for any and all offenses that could be charged against Defendant in the District of Massachusetts, including, but not limited to, false statements and perjury.

10. Court Not Bound by Agreement

The sentencing recommendations made by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the U.S. Probation Office or the Court. Within the

maximum sentence which Defendant faces under the applicable law, the sentence to be imposed is within the sole discretion of the Court. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(B). Defendant may not withdraw his plea of guilty regardless of what sentence is imposed. Nor may Defendant withdraw his plea because the U.S. Probation Office or the Court declines to follow the Sentencing Guidelines calculations or recommendations of the parties. In the event that the Court declines to follow the Sentencing Guidelines calculations or recommendations of the United States, the United States reserves the right to defend the Court's calculations and sentence in any subsequent appeal or collateral challenge.

11. Civil Liability

By entering into this Agreement, the United States does not compromise any civil liability, including but not limited to any tax liability, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in Paragraph 1 of this Agreement, except with respect to any civil penalty that may be imposed pursuant to Title 31, U.S.C., § 5321(a) for tax years 2005 to 2008 (as referenced in Paragraph 4).

Defendant agrees to cooperate with employees of the IRS, the Civil Division of the United States's Office, and law enforcement agents working with attorneys in the Civil Division of the United States's Office, in making an assessment of his civil liabilities. Defendant specifically authorizes release by the IRS-Criminal Investigation or other investigative agency to the aforementioned agencies and their representatives of information for purposes of making that assessment. Defendant further agrees to assent to the filing and allowance of a motion under Rule 6(e) of the Federal Rules of Criminal Procedure, to permit the disclosure of matters occurring before the grand jury for this purpose.

12. Rejection of Plea by Court

Should Defendant's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on motion of Defendant, this Agreement shall be null and void at the option of the United States.

13. Breach of Agreement

If the United States determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of his pretrial release, or has committed any crime following his execution of this Agreement, the United States may, at its sole option, be released from its commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The United States may also pursue all remedies available to it under the law, irrespective of whether it elects to be released from its commitments under this Agreement. Further, the United States may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that, should he breach any provision of this Agreement, the United States will have the right to use against

Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by Defendant, and any information, materials, documents or objects which may be provided by Defendant to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges which Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

14. Who Is Bound By the Agreement

This Agreement is limited to the United States for the District of Massachusetts and the Tax Division of the United States Department of Justice, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

15. Complete Agreement

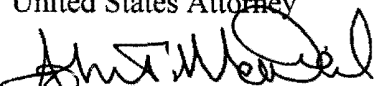
This letter contains the complete and only agreement between the parties. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement between the United States and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant United States Attorney Jonathan F. Mitchell.

Very truly yours,

CARMEN M. ORTIZ
United States Attorney

By:




JAMES F. LANG,
Chief, Criminal Division
JOHN T. McNEIL
Deputy Chief, Criminal Division
JONATHAN F. MITCHELL
Assistant U.S. Attorney


MARK DALY
Trial Attorney
U.S. Department of Justice
Tax Division - NCES

ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.


Michael F. Schiavo
Defendant
Date: 5/18/11

I certify that Michael Schiavo has read this Agreement and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly.


James W. Lawson
Attorney for Michael Schiavo
Date: 5/18/11