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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

-oOo-

9 UNITED STATES OF AMERICA)

10 Plaintiff,)

2:09-CR-77- JCM - (RJJ)

11 vs)

PLEA MEMORANDUM

12 JAN ALAN LINDSEY,)

13 Defendant.)

14 _____)
15 The United States, by and through Daniel G. Bogden, United States Attorney, J. Gregory
16 Damm, Assistant United States Attorney, and defendant JAN ALAN LINDSEY and defendant's
17 attorney, Shari Kaufman, Assistant Federal Public Defender, submit this plea memorandum.

18 I.

19 **PLEA AGREEMENT**

20 The United States and defendant have reached the following plea agreement, which is not
21 binding on the court.

22 A. The Plea

23 The defendant will plead guilty to Count One of the Indictment charging defendant with
24 evasion of payment of taxes owed to the United States, in violation of Title 26, United States Code,
25 Section 7201.

1 B. Additional Charges

2 The United States Attorney's Office for the District of Nevada ("United States") will bring no
3 additional charge or charges against defendant or his wife, Marsha Lindsey, arising out of the
4 investigation of the charges contained in the Indictment herein, which concerned the defendant's
5 evasion of payment of taxes owed to the United States from approximately 1999 through 2006.
6 However, this agreement does not foreclose prosecution for an act of murder, attempted murder, an
7 act of physical violence against the person of another, or any conspiracy to commit any such act of
8 violent unlawful activity.

9 C. Sentencing Guideline Calculations

10 Defendant understands that the court is required to consider United States Sentencing
11 Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining defendant's
12 sentence. Defendant understands that the Sentencing Guidelines are advisory, and that after
13 considering the Sentencing Guidelines, the court may be free to exercise its discretion to impose any
14 reasonable sentence up to the maximum set by statute for the crimes of conviction.

15 The parties agree to the following calculations of the Sentencing Guidelines:

16 1. Defendant's plea to Count One results in a total offense level of 16, and is calculated
17 as follows:

18 a. The Base Offense Level is 16 (USSG §2T1.1(a)(1) and USSG §2T4.1(F)).

19 2. Pursuant to USSG §3E1.1(a), the United States will recommend that defendant receive
20 a two-level adjustment for acceptance of responsibility unless defendant (a) fails to make a complete
21 factual basis for the guilty plea at the time it is entered; (b) is untruthful with the court or probation
22 officers; (c) denies involvement in the offense or provides conflicting statements regarding
23 defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct;
24 (f) fails to appear in court; or (g) violates the conditions of pretrial release.

25 3. Under USSG §3E1.1(b), the United States will, in its sole discretion, make a motion
26 for an additional one-level adjustment for acceptance of responsibility prior to sentencing if defendant

1 timely notifies the United States of defendant's intention to plead guilty, thereby permitting the United
2 States to avoid preparing for trial and allowing for the efficient allocation of resources.

3 4. Defendant agrees that the court may consider any counts dismissed under this
4 agreement, along with all other relevant conduct whether charged or uncharged, in determining the
5 applicable sentencing guidelines range, the propriety and extent of any departure from that range, and
6 the determination of the sentence to be imposed after consideration of the sentencing guidelines and
7 all other relevant factors.

8 5. Defendant's Criminal History Category will be determined by the Court.

9 D. Other Sentencing Matters

10 1. The United States reserves the right to argue for any sentence within the applicable
11 guideline range as determined by the Court. The defendant retains the right to argue for a downward
12 departure from the applicable guideline range as determined by the court and any reasonable sentence
13 under 18 U.S.C. § 3553. If the defendant requests a sentence below the applicable guideline range, the
14 United States reserves the right to argue against any downward departure or sentence below the
15 applicable guideline range.

16 2. The parties agree that the Guideline calculations are based on information now known
17 and could change upon investigation by the United States Probation Office. It is possible that factors
18 unknown or unforeseen by the parties to the plea agreement may be considered in determining the
19 offense level, specific offense characteristics, and other related factors. In that event, defendant will
20 not withdraw defendant's plea of guilty.

21 3. The stipulations in this agreement do not bind either the United States Probation Office
22 or the court. Both defendant and the United States are free to: (a) supplement the facts by supplying
23 relevant information to the United States Probation Office and the court, and (b) correct any and all
24 factual misstatements relating to the calculation of the sentence.

25

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1 E. Fines and Special Assessment

2 1. Defendant agrees that the court may impose a fine due and payable immediately upon
3 sentencing.

4 2. Defendant will pay the special assessment of \$100 for his count of conviction at the
5 time of sentencing.

6 F. Restitution

7 Defendant agrees to make full restitution in an amount to be determined by the Court, which
8 defendant agrees shall include all relevant conduct as determined by the Court. In return for defendant
9 agreeing to make restitution for relevant conduct, the United States agrees not to bring charges against
10 defendant for the conduct giving rise to the relevant conduct. Defendant understands that any
11 restitution imposed by the Court may not be discharged in whole or in part in any present or future
12 bankruptcy proceeding.

13 G. Waiver of Appeal

14 In exchange for the concessions made by the United States in this plea agreement, defendant
15 knowingly and expressly waives: 1) the right to appeal any sentence that is imposed within or below
16 the applicable Sentencing Guideline range as determined by the Court; 2) the right to appeal the
17 manner in which that sentence was determined on the grounds set forth in Title 18, United States
18 Code, Section 3742; 3) the right to appeal any other aspect of the conviction or sentence, including
19 any order of restitution; and 4) the right to bring any collateral attack against his conviction or
20 sentence, except for a claim of ineffective assistance of counsel. Defendant reserves only the right to
21 appeal any portion of the sentence that is an upward departure or higher than the sentencing guideline
22 range based on the offense level predicted by the parties in section C above and the defendant's
23 criminal history category as determined by the court.

24 Notwithstanding the stipulations in this agreement, the parties are free to argue on appeal and
25 collateral review that the court's sentencing guidelines calculations are not error. However, each party
26 agrees to maintain its view that the calculation in paragraph C are consistent with the facts of this case.

1 H. Additional Promises, Agreements, and Conditions

2 1. In exchange for the United States entering into this agreement, defendant agrees that
3 (a) the facts set forth in Section IV of this Plea Agreement shall be admissible against defendant under
4 Fed. R. Evidence. 801(d)(2)(A) in the following circumstances: (1) for any purpose at sentencing; and
5 (2) in any subsequent proceeding, including a trial in the event defendant does not plead guilty or
6 withdraws defendant's guilty plea, to impeach or rebut any evidence, argument or representation
7 offered by or on defendant's behalf; and (b) defendant expressly waives any and all rights under Fed.
8 R. Criminal P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in Section IV of the Plea
9 Agreement to the extent set forth above.

10 2. The parties agree that no promises, agreements, and conditions have been entered into
11 other than those set forth in this plea memorandum, and not will be entered into unless in writing and
12 signed by all parties.

13 I. Limitations

14 This Plea Agreement is limited to the United States Attorney's Office for the District of
15 Nevada and cannot bind any other federal, state or local prosecuting, administrative, or regulatory
16 authority. However, this Plea Memorandum does not prohibit the United States through any agency
17 thereof, the United States Attorney's office for the District of Nevada, or any third party from
18 initiating or prosecuting any civil proceeding directly or indirectly involving defendant, including but
19 not limited to, proceedings under the False Claims Act relating to potential civil monetary liability or
20 by the Internal Revenue Service relating to potential tax liability.

21 **II.**

22 **PENALTY**

23 1. The maximum penalty for each violation of Title 26, United States Code, Section 7201
24 is not more than 5 years imprisonment, a fine of not more than \$250,000, or both.

25 2. Defendant is subject to supervised release for a term of not more than three years.
26 Supervised release is a period of time following imprisonment during which defendant will be subject

1 to various restrictions and requirements. Defendant understands that if defendant violates one or more
2 of the conditions of any supervised release imposed, defendant may be returned to prison for all or part
3 of the term of supervised release, which could result in defendant serving a total term of imprisonment
4 greater than the statutory maximum stated above.

5 3. Defendant must pay a special assessment of \$100 for each count of conviction.

6 4. Defendant is required to pay for the costs of imprisonment, probation, and supervised
7 release, unless defendant establishes that defendant does not have the ability to pay such costs, in
8 which case the court may impose an alternative sanction such as community service.

9 **III.**

10 **ELEMENTS**

11 1. The elements of proof for a violation of *evasion of payment of taxes owed to the United*
12 *States*, in violation of Title 26, United States Code, Section 7201, are the following:

13 First, the defendant owed federal income tax, interest and penalties for the calendar years 1999
14 through 2002 to the United States;

15 Second, the defendant knew that more federal income tax, interest and penalties was owed than
16 what defendant had paid to the United States;

17 Third, the defendant made an affirmative attempt to evade or defeat the payment of income
18 tax, interest and penalties owed to the United States; and,

19 Fourth, in attempting to evade or defeat the payment of such income tax, interest and penalties,
20 the defendant acted willfully.

21 **IV.**

22 **FACTS THAT SUPPORT GUILTY PLEA**

23 1. The defendant is pleading guilty because the defendant is guilty of the charged offense.

24 2. In pleading to the offense, the defendant acknowledges that if the defendant elected to
25 go to trial instead of entering this plea, the United States could prove facts sufficient to establish the
26 defendant's guilt beyond a reasonable doubt.

1 3. The defendant specifically admits and declares under penalty of perjury that all of the
2 facts set forth below are true and correct:

3 4. Defendant Lindsey was an FBI agent for 26 years. After retiring from the FBI in 1995, he
4 began to work as a contractor for the FBI performing background investigations. Lindsey served as
5 an FBI contractor until 2005. He receives retirement payments that are associated with his FBI
6 service.

7 5. Prior to 1999, defendant Lindsey timely filed tax returns with the Internal Revenue
8 Service. Beginning in 1999, Lindsey started using illegal tax avoidance methods to file his and his
9 wife's joint Federal Income Tax Returns. In 1999, defendant Lindsey filed a 1040X amended return
10 that requested a refund of the entire amount of his and his wife's withholdings, claiming they were
11 not liable for the taxes withheld. In 2000, defendant Lindsey filed a "zero" Federal Income Tax
12 Return along with a three page document that stated why he and his wife were not liable for income
13 taxes. Based on defendant Lindsey's failure to file accurate returns, the IRS filed Substitute for
14 Returns which were filed Married Filing Separately for Jan and Marsha Lindsey for the years 1999,
15 2000, 2001, 2002. On or about July 7, 2004, and December 27, 2006, Jan and Marsha Lindsey
16 challenged, via the U.S. Tax Court, the Substitutes for Return assessments. In all cases, the U.S. Tax
17 Court ruled against Jan and Marsha Lindsey and stated they owed the taxes plus interest and penalties.
18 defendant Lindsey has recently filed a number of returns for the years 1999-2007. However, all these
19 returns contained false deductions and understated income.

20 6. Defendant Lindsey has an unpaid liability for the 1999-2002 tax years of approximately
21 \$109,193.98 for unpaid amounts of tax only, without penalties and interest. Those assessments were
22 made pursuant to decisions that were entered by the United States Tax Court for 1999, 2001 and 2002
23 and an unchallenged IRS notice of deficiency for 2000.

24 7. Lindsey committed affirmative acts to evade payment of that liability that include
25 placing assets in nominee names, presenting or recording fraudulent documents in an attempt to obtain
26 lien and levy releases on his property, filing false returns after liabilities were assessed in an attempt

1 to reduce or eliminate his unpaid liability and presenting frivolous financial or negotiable instruments
2 to the Department of the Treasury in claimed payment of his outstanding tax liability.

3 **V.**

4 **ACKNOWLEDGMENT**

5 1. Defendant, acknowledges by defendant's signature below that defendant has read this
6 Memorandum of Plea Agreement, that defendant understands the terms and conditions, and the factual
7 basis set forth herein, that defendant has discussed these matters with defendant's attorney, and that
8 the matters set forth in this memorandum, including the facts set forth in Part IV above are true and
9 correct.

10 2. Defendant acknowledges that defendant has been advised, and understands, that by
11 entering a plea of guilty defendant is waiving, that is, giving up, certain rights guaranteed to defendant
12 by law and by the Constitution of the United States. Specifically, defendant is giving up:

13 a. The right to proceed to trial by jury on the original charges, or to a trial by a
14 judge if defendant and the United States both agree;

15 b. The right to confront the witnesses against defendant at such a trial, and to
16 cross-examine them;

17 c. The right to remain silent at such trial, with such silence not to be used against
18 defendant in any way;

19 d. The right, should defendant so choose, to testify in defendant's own behalf at
20 such a trial;

21 e. The right to compel witnesses to appear at such a trial and to testify in
22 defendant's behalf; and

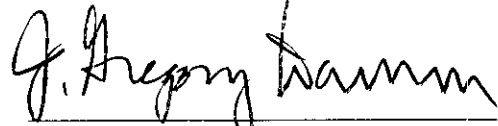
23 f. The right to have the assistance of an attorney at all stages of such proceedings.

24 3. Defendant, defendant's attorney, and the attorney for the United States acknowledge
25 that this Plea Memorandum contains the entire agreement negotiated and agreed to by
26

1 and between the parties, and that no other promise has been made or implied by either defendant,
2 defendant's attorney, or the attorney for the United States.

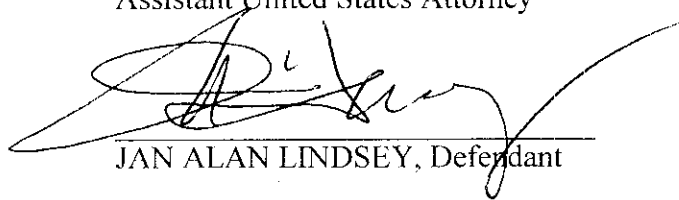
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DANIEL G. BOGDEN
United States Attorney



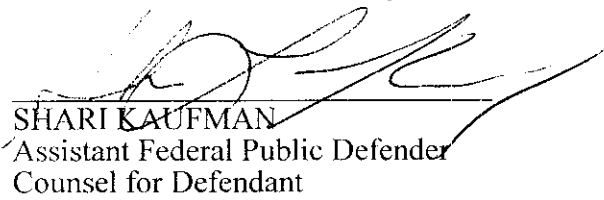
J. GREGORY DAMM
Assistant United States Attorney

3-5-2010
DATED



JAN ALAN LINDSEY, Defendant

3, 5, 2010
DATED



SHARI KAUFMAN
Assistant Federal Public Defender
Counsel for Defendant

for - 3/5/10
DATED