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Northern District of Iowa

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January 18, 2008

Mr. Scott Rhinehart, Esq.  
505 Fifth Street, Suite 310  
Sioux City, IA 51101

Re: *United States v. Thomas Dillavou*, No. CR 07-3022MWB

Dear Mr. Rhinehart:

This letter will serve as a memorandum of a proposed second amended plea agreement between the United States Attorney's Office for the Northern District of Iowa and Thomas Dillavou, defendant. All references to the "United States" or "government" in this proposed plea agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity.

**CHARGES AND PENALTIES**

1. TRD The defendant will plead guilty to Count 1 and Count 4 of the five count superceding indictment presently pending against defendant in Case No CR 07-3022MWB. Counts 1 and 4 of the indictment charges defendant with filing false tax returns in violation of Title 26, United States Code, Section 7208(1). The defendant understands that Counts 1 and 4 are each punishable by a maximum possible sentence of up to three years imprisonment without the possibility of parole, a fine of up to \$250,000, or both; a mandatory special assessment of \$100; a term of supervised release of not more than three years and restitution to the Internal Revenue Service. Counts 2, 3 and 5 will be dismissed at sentencing.

2. TRO The defendant understands that a term of supervised release following incarceration may be imposed in addition to any other sentence. The defendant further acknowledges that if he violates, at any time, any condition of supervised release, he could be returned to prison for the full term of supervised release and the court is not required to grant credit for any amount of time the defendant may have successfully completed on supervised release. The defendant also understands that the U.S. Sentencing Guidelines apply to this case.

PERMAD 80K-631-6585  
GOVERNMENT  
EXHIBIT  
1  
CR07-3022

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3. TRO The defendant understands that pursuant to the Victim and Witness Protection Act, Title I of the Justice for All Act, and the regulations promulgated under the Act by the Attorney General of the United States:

- A. The victim of a crime is given the opportunity to comment on the offense and make recommendations regarding the sentence to be imposed. The defendant understands that the victim's comments and recommendations may be different from those of the parties to this agreement.
- B. The government is required to consult with victims of serious crimes to obtain their view regarding the appropriate disposition of the case against the defendant and make any such information regarding sentencing known to the court. The defendant understands that any victim's opinions and recommendations may be different than those presented by the government.
- C. The government is required to "fully advocate the rights of victims on the issue of restitution unless such advocacy would unduly complicate the sentencing proceeding," and the court is authorized to order restitution by the defendant to victims of crime, including, but not limited to, restitution for property loss, personal injury or death.

4. TRO At the time the guilty plea is entered, the defendant will admit that he is guilty of Counts 1 and 4 of the superceding indictment. The U.S. Attorney's Office for this district will file no additional Title 26 tax charges nor Title 18 bank fraud charges based upon information now in our possession. If this office becomes aware of evidence of additional crimes warranting criminal prosecution, all information in our possession could be used in such a prosecution.

**NON-COOPERATION**

5. TRO The defendant understands that because he has not provided substantial assistance to the government, he will not be eligible for any sentence reduction under 18 U.S.C. Section 3553(e) or USSG §5K1.1.

6. TRO The defendant understands and concedes that although he is not required by the terms of this plea agreement to testify before any court or grand jury, the United States may take the prescribed actions under Title 18, United States Code, Section 6001, et. seq. or any other applicable provision of law to compel his testimony. The defendant agrees that if he refuses to testify after being granted immunity and ordered by the district court to testify, he may be found to be in contempt of court and may be punished in accordance with Federal Rule of Criminal Procedure 42 and Title 18, United States Code, Sections 401 and 402. Further, the United States Attorney's

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Office shall be permitted to pursue any other action available to require the defendant's testimony or punish his refusal to testify subsequent to any order requiring him to testify.

**SENTENCING PROVISIONS**

7. TRD The United States makes no promises as to the sentence to be imposed. The district court will determine the appropriate federal sentence after considering a variety of factors, including: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence to afford adequate deterrence to criminal conduct; (4) the need for the sentence to protect the public from further crimes of the defendant; and (5) the need for the sentence to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (6) the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Defendant understands that the court will also consider the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines for the applicable category of offense(s) committed by defendant and will consider any pertinent policy statements issued as part of the Guidelines. The court will consider relevant adjustments under the United States Sentencing Guidelines, which will include a review of such things as the defendant's criminal history, his acceptance or lack of acceptance of responsibility and other considerations. The court may also consider other information including any information concerning the background, character, and conduct of the defendant.

8. TRD During plea negotiations the parties may have discussed how various factors could impact the federal court's sentencing decision and the determination of the advisory sentencing guidelines range. The parties agree, however, that discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the court. The defendant further understands that he will have no right to withdraw his guilty plea if the sentence imposed is other than he hoped for or anticipated.

9. TRD The defendant understands that the government will urge that the 2002 version of the United States Sentencing Guidelines applies. Defendant may urge that a version of the United States Sentencing Guidelines for a different year will apply. If the 2002 version of the United States Sentencing Guidelines does apply, the parties agree that the Sentencing Guidelines will be applied, in part, as follows:

**Counts 1 and 4**

A. TRD The parties agree the defendant would have a base offense level 16, pursuant to USSG §§ 2T1.1 and 2T4.1 (Tax Table). This is based on an

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approximate tax loss of \$153,488 (28 percent of the approximate \$548,172 in unreported gross income).

B. TRD The parties agree and stipulate that the defendant's base offense level should be increased by 2 levels because the offense involved sophisticated means, under USSG §2T1.1(b)(2).

C. TRD The parties agree that no additional USSG §2T1.1 guideline adjustments are appropriate.

Acceptance of Responsibility

D. TRD As of the date of this agreement, defendant appears to qualify for a two-level downward adjustment for acceptance of responsibility. However, the government shall be free to contest the adjustment under USSG § 3E1.1(a) should it discover information showing defendant has not accepted responsibility or should the defendant subsequently fail to continue to accept responsibility by failing to pay the special assessment; by providing false information to the court, the probation office, or the government; by unlawfully using controlled substances; by attempting to obstruct justice; by falsely denying or frivolously contesting relevant conduct; by breaching this plea agreement; or by acting in a way that is inconsistent with, or failing to act in any way that is consistent with, the granting of the adjustment under USSG § 3E1.1(a). The parties do not stipulate to the applicability of the third-level downward adjustment for acceptance pursuant to USSG § 3E1.1(b), but defendant will argue that the third level should be applied.

10. TRD The defendant, his attorney and the United States may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information to the probation office for use in preparing the presentence report.

FINANCIAL MATTERS

11. TRD The defendant agrees to pay a total special assessment of \$200 as required by 18 U.S.C. § 3013. Using the enclosed payment coupon, the defendant or his representative will send or deliver the special assessment payment to the U.S. District Clerk of Court, P.O. Box 74710, Cedar Rapids, IA 52407-4710. Payment must be in the form of a money order made out to the "U.S. District Clerk of Court." The special assessment must be paid before this signed agreement is returned to the U.S. Attorney's Office. If defendant fails to pay the special assessment prior to the sentencing, defendant stipulates that a downward adjustment for acceptance of responsibility under USSG § 3E1.1 is not appropriate unless the court finds defendant has no ability to pay prior to the sentencing.

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12. TRD The defendant agrees to fully and truthfully complete the enclosed financial statement. Further, upon request, he agrees to provide the U.S. Attorney's Office with any information or documentation in his possession or control regarding his financial affairs and agrees to submit to a debtor's examination when requested. The defendant agrees to provide this information whenever requested until such time any judgment or claim against him, including principal and interest, is satisfied in full. This information will be used to evaluate his capacity to pay any claim or judgment against him.

13. TRD The defendant agrees to file, prior to the time of sentencing, correct personal and corporate (Plastic Injection Molders, Inc.) tax returns for the years 1997 to the present. Defendant further agrees to cooperate with the Internal Revenue Service.

**GENERAL MATTERS**

14. TRD The defendant shall not violate any local, state or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking tickets, committed by the defendant will constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. The defendant or his attorney shall notify this office within 48 hours if the defendant is questioned, charged or arrested for any law violation.

15. TRD If the defendant violates any term or condition of this plea agreement, in any respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United States. If the defendant does breach this agreement, he faces the following consequences: (1) all testimony and other information he has provided at any time to attorneys, employees or law enforcement officers of the government, to the court, or to the federal grand jury, may and will be used against him in any prosecution or proceeding; (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against the defendant and to use any information obtained directly or indirectly from the defendant in those additional prosecutions; and (3) the United States will be released from any obligations, agreements or restrictions imposed upon it under this plea agreement.

17. TRD The defendant 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 to the Constitution. The defendant also agrees that any delay between the signing of this agreement and the final disposition of this case constitutes excludable time under 18 U.S.C. § 3161 et seq. (the Speedy Trial Act) and related provisions.

18. TRD Any agreement to forego filing charges is conditional upon final resolution of this matter. If, 1) defendant does not plead guilty as contemplated by this agreement, 2) this agreement is revoked, 3) defendant's conviction is ultimately

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overturned and/or 4) defendant successfully challenges his conviction through a final order in any appeal, cross-appeal, habeas corpus action or other post-conviction-relief matter, the United States retains the right to reinstate previously dismissed counts and to file charges which were not filed because of this agreement. A final order is an order not subject to further review or an order which no party challenges. The United States may reinstate any dismissed counts or file any uncharged offenses within 90 days of the filing date of final order. The defendant waives all constitutional and statutory speedy trial rights he may have. The defendant also waives all statute of limitations or other objections or defenses he may have related to the timing or timeliness of the filing or prosecution of charges referred to in this paragraph.

**STIPULATION OF FACTS**

19. 19 By initialing each of the following paragraphs, the defendant stipulates to the following facts. He agrees that these facts are true and may be used to establish a factual basis for his guilty plea and sentence. The parties agree that this stipulation of facts is not intended to be a complete recitation of all pertinent facts, but rather a recitation of essential facts necessary to establish a factual basis for the guilty plea. The parties are free to present evidence of additional facts if they believe other facts may be relevant for purposes of sentencing:

19 A. Plastic Injection Molders, Inc. ("PIM") is a plastic molding company owned 50% each by Thomas Dillavou and Gregory Knopf. PIM has been in operation since 1986. In 1993, the defendant entered into an Offer in Compromise agreement with the Internal Revenue Service ("IRS"), on behalf of PIM, pursuant to which PIM agreed to pay delinquent employment taxes over a five year period. During the years 1997 through 2000, the defendant diverted approximately \$598,172 of corporate profits from PIM and spent the money in a variety of ways, including; a personal investment scheme overseas; paying for repairs and remodeling for his personal residence; making payments for personal loans and paying for vacation expenses, among other things. While approximately \$598,172 was diverted from PIM, the government agrees to deduct \$50,000 from this figure for tax loss purposes because defendant had permission from the co-owner, Gregory Knopf, to make a payment or payments of up to \$50,000 in connection with an overseas investment scheme. (The parties understand that the defendant may seek to introduce evidence to establish that the authorized payment or payments by Knopf was as much as \$100,000).

19 B. After the initial agreement, in approximately 1998, Knopf told Dillavou to cease investing corporate funds in the scheme, but the defendant continued to take cash from the corporate account and send the money overseas and pay for other personal expenses without Knopf's knowledge or permission. The money taken from the corporate account and used by defendant constituted taxable income to defendant. The defendant willfully failed to report these funds as gross income in the personal

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Income tax returns Dillavou signed and filed in 2002 and 2003 for tax years 1997, 1998, 1999 and 2000.

TR C. Pursuant to this scheme, the defendant withdraw cash from the PIM corporate bank account on a regular basis from 1997 through most of 2000. Defendant then sent this money by wire transfer overseas and used PIM funds to pay other personal expenses. These personal expenses paid using PIM funds included the payment of some vacation expenses including time share fees, the purchase of jewelry, payments of personal loans, pet supplies, and the payment of expenses for repair and remodeling of his personal residence.

Defendant further agrees that the following information may be considered by the court as related criminal conduct and may be used to determine an appropriate sentence in this case:

TR D. In late November 2000, defendant obtained two checks totaling \$365,556.61. While the checks were allegedly written on the accounts of Warner Bros., Inc. and listed defendant as the payee. Defendant intended to deposit the checks in the PIM bank account at Farmers State Bank in Joice, Iowa. On December 1, 2000, the two checks arrived at Farmers State Bank in Joice, Iowa via Federal Express. While the checks appeared to be endorsed by defendant, the signatures did not look genuine to bank employees who were familiar with Dillavou's signature. In response to an inquiry by a bank employee, Dillavou came to Farmers State Bank and re-endorsed both checks. Dillavou made statements to bank employees in an effort to convince bank employees that the checks were legitimate checks from Warner Brothers, and represented payments for new work from Warner Brothers, Inc. to PIM and represented a down payment for the tooling to make plastic injections molds. Defendant wanted to get immediate credit for the amount of the two checks. Farmers State Bank declined to give defendant immediate credit on his account and the bank later learned that the checks were fraudulent. Farmers State Bank is a federally insured institution. The checks were deposited but never cleared.

**ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING**

20. TR The defendant acknowledges that he has read each of the provisions of this entire plea agreement with the assistance of counsel and understands its provisions. He has discussed the case and his constitutional and other rights with his attorney. The defendant understands that by entering a plea of guilty he will be giving up his right to plead not guilty; to trial by jury; to confront, cross-examine and compel the attendance of witnesses; to present evidence in his defense; to remain silent and refuse to be a witness against himself by asserting his privilege against self-incrimination and to be presumed innocent until proven guilty beyond a reasonable doubt. The defendant agrees that his attorney has represented her in a competent

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manner and has no complaints about that lawyer's representation. The defendant states that he is not now on or under the influence of any drug, medication, liquor, or other intoxicant or depressant, whether prescribed by a physician or not, which would impair his ability to fully understand the terms and conditions of this plea agreement.

21. JRP The defendant acknowledges that he is entering into this plea agreement and is pleading guilty freely and voluntarily because he is guilty and for no other reason. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the government and him (other than those specifically described in this plea agreement), without promise of benefit of any kind (other than any matters contained in this plea agreement) and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of each offense to which he is pleading guilty, including the penalties provided by law.

22. JRP The defendant further understands that he will be adjudicated guilty of each offense to which he will plead guilty and may thereby be deprived of certain rights, including but not limited to, the right to vote, to hold public office, to serve on a jury and to possess firearms. The defendant understands that the government reserves the right to notify any state or federal agency by whom he is licensed, or with whom he does business, of the fact of his conviction.

VERIFICATION

23. JRP This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to the defendant by the United States or its agents. No additional agreement may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

If this agreement is acceptable, please have your client indicate acceptance by placing his initials on the line preceding each of the above paragraphs and by signing below where indicated. By initialing each paragraph and signing below, the defendant acknowledges that he has read, fully understands, and agrees to each paragraph of this agreement. Please return all enclosures, completed and signed, with this signed letter to the U.S. Attorney's Office. Finally, please remember to pay the special assessment, as agreed above, directly to the Clerk of Court. That payment must be remitted to the Clerk before this agreement is returned to our office. Thank you for your cooperation.

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Sincerely,

**MATT M. DUMMERMUTH**  
United States Attorney

By: *Kandice A. Wilcox*

**KANDICE A. WILCOX**  
Assistant United States Attorney

**ENCLOSURES:**  
Financial Statement Form  
Special Assessment Payment Coupon

The undersigned defendant, with advice of counsel, accepts the terms of this plea agreement. The undersigned Assistant United States Attorney accepts the terms of the executed plea agreement.

*Thomas Dillavou* 1/18/08  
\_\_\_\_\_  
THOMAS DILLAVOU Date  
Defendant

*Kandice A. Wilcox* 1/18/08  
\_\_\_\_\_  
KANDICE A. WILCOX Date  
Assistant United States Attorney

*R. Scott Rhinehart* 1/18/08  
\_\_\_\_\_  
R. SCOTT RHINEHART Date  
Attorney for Thomas Dillavou