IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 16-cr-00073-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. JASON TIMOTHY THRONE,

Defendant.

PLEA AGREEMENT

The United States of America (the government), by and through Assistant United States Attorney Thomas M. O'Rourke, and the defendant Jason Timothy Throne, personally and by counsel, John Henry Schlie, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

I. AGREEMENT

The defendant agrees to plead guilty to two counts of an Information charging violations of Title 18, United States Code, Section 1341 (mail fraud), and Title 26, United States Code, Section 7206(1) (willfully making and subscribing false tax return). He agrees to waive his right to have both offenses initiated by indictment and his right to have the false-tax-return offense (Count 2) brought in a district in which it occurred. He agrees to admit the forfeiture allegation in the Information.

The defendant agrees that the amount of restitution that the court should order as a result of his conviction on Count 1 is $4,841,146.09. He agrees pursuant to Title 18,

COURT EXHIBIT
1

United States Code, Section 3663(a)(3), that as a result of his conviction on Count 2 and for relevant conduct the court should order restitution to the Internal Revenue Service (IRS) in the amount of $345,348.72.

The defendant agrees to do the following, as necessary: (1) make his best efforts to file with the IRS complete, correct, and appropriately signed amended income tax returns for the years 2009 through 2014, (2) provide the IRS with tax-related information for those years that is in his possession, custody or control, if requested by the IRS, and (3) pay any additional taxes, penalties, and interest due and owing for those years.

The government agrees that it will not initiate any other federal criminal charges in the Districts of Colorado and Maine on the basis of the facts set out below.

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence unless it meets one of the following criteria: (1) the sentence exceeds the *maximum penalty provided in the statute of conviction*, (2) the sentence exceeds the advisory guideline range that applies to a total offense level of 23, or (3) the government appeals the sentence imposed. If any of these three criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255). This waiver provision does not prevent the

defendant from seeking relief otherwise available in a collateral attack on any of the following grounds: (1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute, (2) the defendant was deprived of the effective assistance of counsel, or (3) the defendant was prejudiced by prosecutorial misconduct.

This is an agreement pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure.

II. ELEMENTS OF THE OFFENSE

A. Count 1 (Mail Fraud)

The parties agree that the elements of the offense charged in Count 1 are as follows:

1. The defendant devised or intended to devise a scheme to defraud.

2. The scheme involved materially false or fraudulent pretenses, representations, or promises.

3. The defendant knowingly caused something to be delivered by mail for the purpose of executing the scheme.

4. The defendant acted with intent to defraud.

18 U.S.C. § 1341; *United States v. Kalu*, 791 F.3d 1194, 1202-04 (10th Cir. 2015); *Neder v. United States*, 527 U.S. 1, 25 (1999).

B. Count 2 (False Tax Return)

The parties agree that the elements of the offense charged in Count 2 are as follows:

1. The defendant signed an income tax return that contained a written declaration that it was made under the penalties of perjury.

2. The return contained a false statement.

3. The defendant knew the statement was false.

4. The defendant acted willfully.

5. The statement was material.

10th Cir. Pattern Crim. Jury Instr. § 2.93 (2011).

III. STATUTORY PENALTIES

The maximum statutory penalty for the mail fraud violation charged in Count 1 of the Information is: A term of imprisonment of not more than 20 years, a fine of not more than $250,000 or not more than the greater of twice the gross pecuniary gain or twice the gross pecuniary loss resulting from the offense, or both fine and imprisonment; a $100 special assessment; a term of supervised release of not more than three years; and restitution.

The maximum statutory penalty for making and subscribing a false tax return as charged in Count 2 of the Information is: A term of imprisonment of not more than three years, a fine of not more than $250,000, or both fine and imprisonment; the costs of prosecution; a $100 special assessment; a term of supervised release of not more than one year; and restitution.

If probation or supervised release is imposed, a violation of any condition of probation or supervised release may result in a separate prison sentence and additional supervision.

IV. COLLATERAL CONSEQUENCES

The convictions may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury.

V. STIPULATION OF FACTS

The parties agree that there is a factual basis for the guilty pleas that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offenses of conviction, consider relevant conduct, and consider the other factors set forth in Title 18, United States Code, Section 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and which are relevant to the Court's guideline computations, to other Section 3553 factors, or to the Court's overall sentencing decision.

The parties agree that the date on which relevant conduct began was on or about December 29, 1999.

The parties agree that the government's evidence would include the following:

A. Introduction

At all relevant times, Hunter Douglas, Inc. (HDI) and its affiliate, Hunter Douglas Window Fashions, Inc. (HDWFI), were in the business of designing, manufacturing, and

fabricating window coverings and related products. HDWFI's place of business was Broomfield, Colorado.

The defendant Jason Timothy Throne, a lawyer, joined HDI as an intellectual property counsel in 1993. He was promoted to intellectual property general counsel in 2001 and remained in that position until his HDI employment was terminated in June 2014. Until 2015, Throne was licensed to practice law in New Hampshire and registered to practice in patent cases before the United States Patent and Trademark Office.

Throne's duties during the relevant times included managing and overseeing *patents and trademarks* for HDI and HDWFI; managing outside patent attorneys and outside inventors; evaluating and licensing inventors' technologies; the day-to-day management of patent and trademark litigation; advising senior management on patent and trademark issues; formulating, negotiating, and implementing licensing strategies; tracking the development of new products and processes within HDI's North American companies; establishing patent and trademark strategies for HDI; keeping inventors abreast of new technologies and inventions in the window coverings industry; advising in-house tax counsel on patent and trademark issues; and "brainstorming" with inventors and other company employees to assess the possibility of patenting new inventions, to enhance inventions, and to respond to competitive threats. In addition, Throne is listed as an inventor in forty-two of HDI's United States patents.

In September 2007, HDI provided Throne with a written policy statement that said full-time employees, such as him, could not have outside employment without approval. Throne at that time acknowledged that he understood that policy and signed an HDI form on which he checked a box next to the words, "No; I do not have a 2nd Job."

Throne resided in Colorado from the time he joined HDI until July 2004, when he moved to Maine. Beginning in 1995, while he lived in Colorado, and continuing until his employment ended, Throne worked primarily from his home and occasionally at the HDWFI office in Broomfield and another company facility in Massachusetts. His supervisors approved that arrangement.

B. The Fraud Scheme

On December 29, 1999, Throne arranged for Patent Services Group, Inc. (PSG) to be incorporated in Colorado. At about the same time, he opened post office box 2019 in Boulder, Colorado, stating on a Postal Service application that the box would be used by PSG. In early 2000, Throne opened an account in the name of PSG at Vectra Bank in Steamboat Springs, Colorado.

Beginning in early 2000 and continuing to April 2014, Throne prepared 162 false PSG invoices, each addressed, "Jason T. Throne Hunter Douglas Inc.," and each showing the Boulder post office box as PSG's address. Throne stated on each invoice that PSG had performed patent searches for Hunter Douglas and that Hunter Douglas owed money to PSG for those services.[1] After writing "OK to pay" and his initials on each of the invoices, Throne submitted them on a monthly basis to the accounting department at the HDWFI office in Colorado.

Relying on Throne's approvals, the accounting department paid the invoices by mailing HDWFI checks to the Boulder post office box between April 18, 2000, and April

[1] An inventor or someone acting on an inventor's behalf may conduct a search of existing patents to determine whether something similar to the inventor's invention has been patented. "This may be done in the Public Search Facility of the [United States Patent and Trademark Office], and in libraries located throughout the United States that have been designated as Patent and Trademark Resource Centers . . . ." United States Patent and Trademark Office, *General Information Regarding Patents* 6 (2014), *available at* http://www.uspto.gov/sites/default/files/inventors/edu-inf/BasicPatent Guide.pdf.

25, 2014. (The checks included the one mentioned in paragraph 15 of Count 1 of the Information.) The total amount of the checks was $4,841,146.09.

After retrieving the checks from the post office, Throne deposited them into the PSG account at Vectra Bank. He then caused the money to be moved from that account to personal bank accounts and used it for mortgage payments, home renovations, landscaping, and other personal expenses.

Other than submitting the invoices to the HDWFI accounting department, Throne never mentioned PSG to anyone at HDI or HDWFI. Neither his supervisors nor any other Hunter Douglas employee was aware of any services provided by PSG. Physical searches of Hunter Douglas's files produced no memoranda, reports, summaries, analyses, or other materials documenting patent searches or any other services provided by PSG. Searches of computers that Throne used as a Hunter Douglas lawyer, using the search terms "Patent Services Group," "PSG," and "patentservicesgroup," also produced no memoranda, reports, summaries, analyses, or other materials documenting patent searches or any other services provided by PSG.

On November 22, 2013, HDWFI's accounting department prepared a summary of the year's legal charges, including the payments to PSG, and emailed it to two company employees. One of the recipients was N.H., a patent engineer whom Throne had supervised since 2010 and who had assisted him in investigating patents and evaluating the enforceability of the company's intellectual property. After reviewing the charges, N.H. sent an email to the accounting department and to Throne, saying, "I have NO idea what all of the 'Patent services group' astronomical charges are." She asked Throne, "Jason, do you know what those are? I have never heard of that." Throne immediately con-

tacted N.H. by telephone and told her that PSG was a patent search service and the payments had been approved. Later that day, Throne sent an email to N.H. and other HDWFI employees, misrepresenting that PSG "is a patent search service that I use that tracks a number of different developments throughout the organization." He claimed that he used PSG "to conduct state of the art searches for different inventors and to conduct validity searches for are [sic] lawsuits, which for this year have been very high." In that email and in his earlier call to N.H., Throne continued to hide his relationship to PSG.

On June 3, 2014, two Hunter Douglas supervisors and a lawyer for the company, having determined there was a connection between Throne and PSG, confronted him about it. Throne responded by misrepresenting that his wife, as the owner of PSG, performed patent searches under his guidance. He falsely stated that about seventy percent of PSG's work was done for Hunter Douglas affiliates and the remainder for other companies.

The government's position is that the patent searches described in the PSG invoices were not conducted and that Throne knew they were not conducted. The defendant's position is that he conducted the searches. He maintains that he did the work under the guise of PSG because it was his understanding that, as a Hunter Douglas employee, he was not allowed to conduct patent searches. The government notes, however, that Throne represented that he did patent searches as part of his duties as a Hunter Douglas lawyer. In August 2002, for example, in a report to his supervisor discussing an individual who had offered a product to Hunter Douglas, Throne said, "I am conducting a patent search of his concept because I believe the technology is old." Sometime after moving to Maine, Throne prepared a resume that said one of his respon-

sibilities at Hunter Douglas was to "Conduct Patent Searches of New Inventions." And in an interoffice memorandum in June 2008, Throne discussed a proposed sale of a product by an HDI subsidiary and said, "It would be prudent for us to conduct a patent search on the [product]." In addition, Throne claimed during an interview with government representatives that he used an hourly rate to compute the amounts billed by PSG but acknowledged he kept no record of the hours he supposedly spent conducting the searches.

The defendant agrees that, assuming he did the patent searches described in the PSG invoices, he nevertheless defrauded HDI and HDWFI out of $4,841,146.09 because arranging for such searches was his responsibility as a paid HDI employee.

C. ***False Tax Returns***

For the years 2009 through 2013, Throne prepared Forms 1040 U.S. Individual Income Tax Returns for himself and his wife and a 2014 Form 1040 for himself only. (The criminal tax part of the investigation was limited to 2009 through 2014.) Throne signed the 2011 return (which is charged in Count 2) below a written declaration that it was made under the penalties of perjury and filed it on or about April 13, 2012. He filed all of the 2009-14 returns by mailing them to the Internal Revenue Service from Maine.

Throne should have reported all of the proceeds of the above-described scheme on the returns as "Other income,"[2] but he instead reported only some of the proceeds and mischaracterized them as other forms of income. He also falsely claimed business expenses.

---

[2] *See James v. United States*, 366 U.S. 213, 218 (1961).

Attached to each return was a Schedule C on which Throne misrepresented that fraud proceeds were gross receipts or sales of an unnamed business. He included on each schedule a list of false expenses, which over the years included insurance, legal and professional services, automobile expenses, repairs and maintenance, travel, advertising, and meals and entertainment. He subtracted the expenses from the gross receipts or sales and recorded the difference as income on the first page of each Form 1040 return. In addition to reporting fraud proceeds on Schedules C for all of the years, Throne mischaracterized some of the other proceeds as wages paid to his wife on the 2009 and 2010 returns and as capital gains on the 2010 return.

The following is a summary of the portions of the fraud proceeds that Throne reported as income on his Form 1040 returns:

Year	Fraud proceeds	Fraud proceeds reported as wages	Fraud proceeds reported as Schedule C net profits	Fraud proceeds reported as capital gains	Total fraud proceeds reported as income
2009	$341,821.78	$117,550.44	$86,562.36		$204,112.80
2010	$402,663.67	$22,480.26	$84,970.50	$201,444.98	$308,895.74
2011	$419,761.30		$184,205.25		$184,205.25
2012	$444,723.94		$235,416.91		$235,416.91
2013	$442,743.12		$235,958.43		$235,958.43
2014	$187,546.17		$85,575.00		$85,575.00

Throne claimed a tax refund on his 2009 Form 1040, and the IRS paid that refund. If Throne had properly reported the fraud proceeds on that year's return, he would not have been eligible for a refund and instead would have owed additional taxes. For the years 2010 through 2014, Throne's returns said taxes were owed, but if he had properly reported the fraud proceeds on those years' returns, the amounts owed would have been greater. The tax loss resulting from the false 2009-14 returns is $345,348.72.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

The parties understand that the imposition of a sentence in this matter is governed by Title 18, United States Code, Section 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

A. The mail fraud violation charged in Count 1 and the tax offense charged in Count 2 are not grouped together. *United States v. Lindsay*, 184 F.3d 1138, 1142-43 (10th Cir. 1999).

B. For Count 1, the base guideline is § 2B1.1(a)(1), with a base offense level of 7. The offense level is increased by 18 because the loss is more than $3,500,000 but not more than $9,500,000. U.S.S.G. § 2B1.1(b)(1)(J). The resulting offense level is 25.

C. For Count 2, the base guideline is § 2T1.1(a)(1), incorporating § 2T4.1 (tax table). Because the tax loss is more than $250,000 but not more than $550,000, the base offense level is 18. U.S.S.G. § 2T4.1(G).

D. The combined offense level is 26. U.S.S.G. § 3D1.4.

E. The combined offense level should be decreased by 3 levels if the defendant demonstrates acceptance of responsibility for the offense and assists authorities in the prosecution of his misconduct by timely notifying authorities of his intention to enter guilty pleas, thereby permitting the government to avoid preparing for trial and permitting the

government and the court to allocate their resources efficiently. U.S.S.G. § 3E1.1. The resulting offense level would be 23.

F. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be Category I.

G. The career offender, criminal livelihood, and armed career criminal adjustments would not apply.

H. The advisory guideline range resulting from these calculations would be 46 months to 57 months.

I. Pursuant to guideline § 5E1.2(c)(3), assuming the estimated offense level of 23, the fine range for this offense would be $20,000 to $200,000, plus applicable interest and penalties.

J. Pursuant to guideline § 5D1.2(a), if the Court imposes a term of supervised release, that term would be at least one year but not more than three years for Count 1 and one year for Count 2.

K. The defendant should be ordered to pay restitution of $4,841,146.09 to Hunter Douglas Inc. and/or Hunter Douglas Window Fashions, Inc. and $345,348.72 to the IRS.

The parties understand that, although the Court will consider the parties' estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of either party.

No estimate by the parties regarding the guideline range precludes either party from asking the Court, within the overall context of the guidelines, to depart from that

range at sentencing if that party believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate by the parties regarding the guideline range precludes either party from asking the Court to vary entirely from the advisory guidelines and to impose a non-guideline sentence based on other Section 3553 factors.

The parties understand that the Court is free, upon consideration and proper application of all Section 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any Section 3553 factor.

VII. ENTIRE AGREEMENT

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defen-

dant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: 4-5-2016

Jason Timothy Throne
Defendant

Date: 4/5/16

John Henry Schlie
Attorney for Defendant

Date: 3/22/16

Thomas M. O'Rourke
Assistant United States Attorney