

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

JEFFREY ZIRKLE,
Defendant.

NO. CR21-0167JLR

PLEA AGREEMENT

The United States of America, by and through Nicholas W. Brown, United States Attorney for the Western District of Washington, and Seth Wilkinson, Assistant United States Attorney, Defendant Jeffrey Zirkle, and Defendant's attorney, Harold Malkin, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).

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 enters a plea of guilty to the charge of Filing a False Tax Return, as charged in Count 1 of the Information, in violation of Title 26, United States Code, Section 7206(1).

1 By entering a plea of guilty, Defendant hereby waives all objections to the form of
2 the charging document. Defendant further understands that before entering any guilty
3 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
4 may 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 Filing a False
6 Tax Return, as charged in Count 1, are as follow:

7 *First*, the defendant made and subscribed a return, statement, or other document
8 that was false as to a material matter;

9 *Second*, the return, statement or other document contained a written declaration
10 that it was made under penalty of perjury;

11 *Third*, the defendant did not believe the return, statement or other document to be
12 true as to every material matter; and

13 *Fourth*, the defendant acted willfully.

14 **4. The Penalties.** Defendant understands that the statutory penalties
15 applicable to the offense to which Defendant is pleading guilty are as follows:

16 A maximum term of imprisonment of up to three years, a fine of up to \$250,000, a
17 period of supervision following release from prison of up to one year, and a mandatory
18 special assessment of \$100 dollars. If a probationary sentence is imposed, the probation
19 period can be for up to five years.

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

1 Defendant understands that as a part of any sentence, in addition to any term of
 2 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
 3 restitution to any victim of the offense, as required by law.

4 Defendant further understands that the consequences of pleading guilty may
 5 include the forfeiture of certain property, either as a part of the sentence imposed by the
 6 Court, or as a result of civil judicial or administrative process.

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

11 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
 12 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

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

1 **6. United States Sentencing Guidelines.** Defendant understands and
2 acknowledges that the Court must consider the sentencing range calculated under the
3 United States Sentencing Guidelines and possible departures under the Sentencing
4 Guidelines together with the other factors set forth in Title 18, United States Code,
5 Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the
6 history and characteristics of Defendant; (3) the need for the sentence to reflect the
7 seriousness of the offense, to promote respect for the law, and to provide just punishment
8 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
9 conduct; (5) the need for the sentence to protect the public from further crimes of
10 Defendant; (6) the need to provide Defendant with educational and vocational training,
11 medical care, or other correctional treatment in the most effective manner; (7) the kinds
12 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
13 avoid unwarranted sentence disparity among defendants involved in similar conduct who
14 have similar records. Accordingly, Defendant understands and acknowledges that:

15 a. The Court will determine Defendant's Sentencing Guidelines range
16 at the time of sentencing;

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

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

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

26 **7. Ultimate Sentence.** Defendant acknowledges that no one has promised or
27 guaranteed what sentence the Court will impose.
28

1 8. **Statement of Facts.** Defendant admits that Defendant is guilty of the
2 charged offense. The parties agree on the following facts:

3 a. Between 2006 and 2019, Jeffrey Zirkle was one of two majority
4 owners and Chief Executive Officers of Total Reclaim, Inc. Total Reclaim's business
5 involved recycling electronic waste for public, quasi-public, and private entities.

6 b. As a Chief Executive Officer of Total Reclaim, Zirkle had access to
7 several credit cards issued to the company.

8 c. Between 2007 and 2019, Zirkle repeatedly used Total Reclaim credit
9 cards to pay for personal expenses that had no relationship to any Total Reclaim business
10 purpose. Zirkle then allowed the expenses to be categorized as business expenses in
11 Total Reclaim's accounting system. As a result, through 2018, the personal charges were
12 not reflected as compensation to Zirkle, as a shareholder distribution, or as an account
13 receivable. Zirkle's business partner was unaware of the degree to which Zirkle used
14 Total Reclaim credit cards for these personal uses.

15 d. Following are examples of personal expenses that Zirkle charged to
16 Total Reclaim credit cards:

17 i. On or about August 30, 2013, Zirkle charged \$15,756 to a
18 Total Reclaim credit card to pay for expenses associated with a home irrigation system
19 for personal use;

20 ii. On or about June 2, 2014, Zirkle charged \$17,587 to a Total
21 Reclaim credit card for home appliances purchased at Albert Lee, Inc. for personal use;

22 iii. On or about February 12, 2016, Zirkle charged \$4,163 to a
23 Total Reclaim credit card to pay for personal items purchased at Louis Vuitton Las
24 Vegas;

25 iv. On or about December 9, 2016, Zirkle charged \$4,000 to a
26 Total Reclaim credit card in partial payment for a KTM 450 SX-F motorcycle for
27 personal use;

28 v. On or about July 17, 2017, Zirkle charged \$1,260 to a Total
Reclaim credit card to purchase a Tag Heuer watch for personal use;

 vi. On or about March 6, 2018, Zirkle charged \$5,062 to a Total
Reclaim credit card in partial payment for a 1966 Chevrolet Chevelle, titled to Zirkle, and
for Zirkle's personal use; and

1 e. The parties agree that, between 2007 and 2019, Zirkle made
 2 hundreds of charges to Total Reclaim credit cards for personal items. It is not possible
 3 given the passage of time and existing documentation to establish definitively the amount
 4 of personal charges charged to Total Reclaim credit cards and treated as Total Reclaim
 5 business expenses between 2007 and 2018. For purposes of resolving this matter,
 6 however, Zirkle agrees that the approximate amount of personal charges made on Total
 7 Reclaim credit cards and treated as Total Reclaim business expenses between 2007 and
 8 2018 was approximately \$480,000. As Zirkle knew, each of the personal charges
 9 constituted taxable income to Zirkle.

10 f. Zirkle filed a Form 1040 personal income tax return for each tax
 11 year between 2007 and 2018. When calculating his gross income on each tax return,
 12 Zirkle did not include as income for each respective year the personal charges he had
 13 made using the Total Reclaim credit cards.

14 g. For example, for the tax year 2014, Zirkle made approximately
 15 \$71,240 worth of charges to Total Reclaim credit cards for personal expenses, which
 16 constituted taxable income to Zirkle. Zirkle filed his 2014 tax return on October 2, 2015,
 17 which Zirkle signed under penalty of perjury. On line 7 of the Form 1040, Zirkle claimed
 18 \$868,633 in wages, salary, and tips, which did not include the approximately \$71,240 in
 19 credit card charges. Zirkle did not disclose the approximately \$71,240 as income from an
 20 S corporation on line 17, as other income on line 21, or anywhere else on the Form 1040.
 21 As a result, and as Zirkle knew, the tax return was not true as to every material matter. In
 22 so doing, Zirkle willfully filed a false tax return in violation of 26 U.S.C. §7206(1).

23 The parties agree that the Court may consider additional facts contained in the
 24 Presentence Report (subject to standard objections by the parties) and/or that may be
 25 presented by the United States or Defendant at the time of sentencing, and that the factual
 26 statement contained herein is not intended to limit the facts that the parties may present to
 27 the Court at the time of sentencing.

28 **9. Sentencing Factors.** The parties agree that the following Sentencing
 Guideline provision applies to this case:

A base offense level of 16 pursuant to USSG §2T1.1 and 2T4.1(F) because
 the offense involved a tax loss in excess of \$100,000, but less than
 \$250,000.

The parties agree they are free to present arguments regarding the applicability of
 all other provisions of the United States Sentencing Guidelines. Defendant understands,

1 however, that at the time of sentencing, the Court is free to reject these stipulated
 2 adjustments, and is further free to apply additional downward or upward adjustments in
 3 determining Defendant's Sentencing Guidelines range.

4 **10. Tax Loss Amount.** The United States and Defendant stipulate and agree
 5 that the correct amount of tax loss, including relevant conduct, for purposes of sentencing
 6 is \$125,549.90, as follows:

Tax Year	Tax Due and Owing
2007	3,207.85
2008	4,296.54
2009	4,179.08
2010	20,727.96
2011	13,186.39
2012	8,403.75
2013	26,311.42
2014	19,947.32
2015	3,976.54
2016	6,317.38
2017	8,285.11
2018	6,706.56
Total	125,549.90

22 **11. Acceptance of Responsibility.** At sentencing, if the Court concludes
 23 Defendant qualifies for a downward adjustment acceptance for acceptance of
 24 responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or
 25 greater, the United States will make the motion necessary to permit the Court to decrease
 26 the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because
 27 Defendant has assisted the United States by timely notifying the United States of
 28

1 Defendant's intention to plead guilty, thereby permitting the United States to avoid
2 preparing for trial and permitting the Court to allocate its resources efficiently.

3 **12. Agreed Sentencing Recommendation.** Pursuant to Federal Rule of
4 Criminal Procedure 11(c)(1)(B), the parties and undersigned counsel agree to recommend
5 that the Court impose a sentence of six months of imprisonment. The parties agree that
6 this sentence, which is a below-guideline sentence, is appropriate under the unique facts
7 of this case, including: the fact that the charged offense pre-dated the defendant's
8 conviction and sentencing in *United States v. Zirkle*, CR18-0227RAJ ("Zirkle I"); the fact
9 that prior to being advised that he would be charged in this matter, Zirkle addressed the
10 personal charges at issue to the satisfaction of Total Reclaim; and, further, the fact that
11 that following the offense conduct that is the basis of this matter, the defendant served a
12 28-month sentence in Zirkle I during which there were no reported disciplinary
13 infractions, and subsequent to which there have been no supervised release violations.
14 Defendant understands that this recommendation is not binding on the Court and the
15 Court may reject the recommendation of the parties and may impose any term of
16 imprisonment up to the statutory maximum penalty authorized by law. Defendant further
17 understands that Defendant cannot withdraw a guilty plea simply because of the sentence
18 imposed by the Court.

19 **13. Restitution.** Defendant shall make restitution pursuant to Title 18, United
20 States Code, Section 3663(a)(3) to the IRS in the amount of \$125,549.90, with credit for
21 any amounts already paid. Defendant understands that this Plea Agreement does not
22 preclude the Internal Revenue Service from assessing and determining any additional
23 civil tax, penalties, and/or interest that may be owed by Defendant. In addition,
24 Defendant understands that Defendant is required to pay costs of prosecution.

25 a. The full amount of restitution shall be due and payable immediately
26 on entry of judgment and shall be paid as quickly as possible. If the Court finds that the
27 defendant is unable to make immediate restitution in full and sets a payment schedule as
28 contemplated in 18 U.S.C. § 3664(f), Defendant agrees that the Court's schedule

1 represents a minimum payment obligation and does not preclude the U.S. Attorney's
2 Office from pursuing any other means by which to satisfy the defendant's full and
3 immediately-enforceable financial obligation, including, but not limited to, by pursuing
4 assets that come to light only after the district court finds that the defendant is unable to
5 make immediate restitution.

6 b. Defendant agrees to disclose all assets in which Defendant has any
7 interest or over which Defendant exercises control, directly or indirectly, including those
8 held by a spouse, nominee, or third party. Defendant agrees to cooperate fully with the
9 United States' investigation identifying all property in which Defendant has an interest
10 and with the United States' lawful efforts to enforce prompt payment of the financial
11 obligations to be imposed in connection with this prosecution. Defendant's cooperation
12 obligations are: (1) before sentencing, and no more than 30 days after executing this Plea
13 Agreement, truthfully and completely executing a Financial Disclosure Statement
14 provided by the United States Attorney's Office and signed under penalty of perjury
15 regarding Defendant's and Defendant's spouse's financial circumstances and producing
16 supporting documentation, including tax returns, as requested; (2) providing updates
17 with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within
18 seven days of the event giving rise to the changed circumstances; (3) authorizing the
19 United States Attorney's Office to obtain Defendant's credit report before sentencing; (4)
20 providing waivers, consents or releases requested by the U.S. Attorney's Office to access
21 records to verify the financial information; (5) authorizing the U.S. Attorney's Office to
22 inspect and copy all financial documents and information held by the U.S. Probation
23 Office; (6) submitting to an interview regarding Defendant's Financial Statement and
24 supporting documents before sentencing (if requested by the United States Attorney's
25 Office), and fully and truthfully answering questions during such interview; and (7)
26 notifying the United States Attorney's Office before transferring any interest in property
27 owned directly or indirectly by Defendant, including any interest held or owned in any
28 other name, including all forms of business entities and trusts.

1 c. The parties acknowledge that voluntary payment of restitution prior
2 to the adjudication of guilt is a factor the Court considers in determining whether
3 Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a).

4 d. Defendant agrees to pay Title 26 interest on the restitution amount;
5 interest runs from the last date prescribed for payment of the relevant tax through the date
6 of sentencing. The government will provide an updated interest figure at sentencing.

7 e. Defendant agrees that restitution is due and payable immediately
8 after the judgment is entered and is subject to immediate enforcement, in full, by the
9 United States. If the Court imposes a schedule of payments, Defendant agrees that the
10 schedule of payments is a schedule of the minimum payment due, and that the payment
11 schedule does not prohibit or limit the methods by which the United States may
12 immediately enforce the judgment in full. The IRS will use the amount of restitution
13 ordered as the basis for a civil assessment under 26 U.S.C. § 6201(a)(4). Defendant does
14 not have the right to challenge the amount of this restitution-based assessment. *See* 26
15 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor
16 Defendant's timely payment of restitution according to that schedule will preclude the
17 IRS from immediately collecting the full amount of the restitution-based assessment.

18 f. Defendant is entitled to receive credit for restitution paid pursuant to
19 this plea agreement against those assessed civil tax liabilities due and owing for the same
20 periods for which restitution was ordered. Defendant understands and agrees that the plea
21 agreement does not resolve the Defendant's civil tax liabilities, that the IRS may seek
22 additional taxes, interest and penalties from Defendant relating to the conduct covered by
23 this plea agreement and for conduct relating to another time period, and that satisfaction
24 of the restitution debt does not settle, satisfy, or compromise Defendant's obligation to
25 pay any remaining civil tax liability. Defendant authorizes release of information to the
26 IRS for purposes of making the civil tax and restitution-based assessments

27 g. Defendant understands that he is not entitled to credit with the IRS
28 for any payment until the payment is received by the IRS.

1 h. If full payment cannot be made immediately, Defendant agrees to
 2 make a complete and accurate financial disclosure to the IRS on forms prescribed by the
 3 IRS (including, but not limited to, IRS Form 433-A and Form 433-B, as appropriate), and
 4 to disclose to the IRS any and all additional financial information and financial
 5 statements provided to the probation office. Defendant also agrees to provide the above-
 6 described information to the probation office

7 i. If Defendant makes a payment of the restitution prior to sentencing,
 8 the payment will be applied as a credit against the restitution ordered pursuant to this
 9 agreement.

10 14. **Fine.** The United States agrees not to recommend imposition of a fine as
 11 part of Zirkle's sentence.

12 15. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
 13 the United States Attorney's Office for the Western District of Washington agrees not to
 14 prosecute Defendant for any additional offenses known to it as of the time of this Plea
 15 Agreement based upon evidence in its possession at this time, and that arise out of the
 16 conduct giving rise to this investigation. In this regard, Defendant recognizes the United
 17 States has agreed not to prosecute all of the criminal charges the evidence establishes
 18 were committed by Defendant solely because of the promises made by Defendant in this
 19 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
 20 Presentence Report, the United States Attorney's Office will provide the United States
 21 Probation Office with evidence of all conduct committed by Defendant.

22 Defendant agrees that any charges to be dismissed before or at the time of
 23 sentencing were substantially justified in light of the evidence available to the United
 24 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
 25 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
 26 (1997).

27 16. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
 28 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea

1 Agreement and Defendant may be prosecuted for all offenses for which the United States
 2 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 3 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 4 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
 5 Defendant has waived any objection to the re-institution of any charges that previously
 6 were dismissed or any additional charges that had not been prosecuted.

7 Defendant further understands that if, after the date of this Agreement, Defendant
 8 should engage in illegal conduct, or conduct that violates any conditions of release or the
 9 conditions of confinement (examples of which include, but are not limited to, obstruction
 10 of justice, failure to appear for a court proceeding, criminal conduct while pending
 11 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
 12 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 13 additional charges against Defendant or to seek a sentence that takes such conduct into
 14 consideration by requesting the Court to apply additional adjustments or enhancements in
 15 its Sentencing Guidelines calculations in order to increase the applicable advisory
 16 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 17 advisory Guidelines range. Under these circumstances, the United States is free to seek
 18 such adjustments, enhancements, departures, and/or variances even if otherwise
 19 precluded by the terms of the Plea Agreement.

20 **17. Waiver of Appellate Rights and Rights to Collateral Attacks.**

21 Defendant acknowledges that, by entering the guilty plea required by this plea agreement,
 22 Defendant waives all rights to appeal from Defendant's conviction and any pretrial
 23 rulings of the Court. Defendant further agrees that, provided the Court imposes a
 24 custodial sentence that is within or below the Sentencing Guidelines range (or the
 25 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
 26 Court at the time of sentencing, Defendant waives to the full extent of the law:

27 a. Any right conferred by Title 18, United States Code, Section 3742,
 28 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,

1 restitution order, probation or supervised release conditions, or forfeiture order (if
2 applicable); and

3 b. Any right to bring a collateral attack against the conviction and
4 sentence, including any restitution order imposed, except as it may relate to the
5 effectiveness of legal representation.

6 This waiver does not preclude Defendant from bringing an appropriate motion
7 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
8 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

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

14 **18. Voluntariness of Plea.** Defendant agrees that Defendant has entered into
15 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
16 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
17 Agreement or set forth on the record at the change of plea hearing in this matter.

18 **19. Statute of Limitations.** In the event this Plea Agreement is not accepted
19 by the Court for any reason, or Defendant breaches any of the terms of this Plea
20 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
21 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the
22 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach
23 of the Plea Agreement by Defendant is discovered by the United States Attorney's
24 Office.

25 **20. Completeness of Agreement.** The United States and Defendant
26 acknowledge that these terms constitute the entire Plea Agreement between the parties,
27 except as may be set forth on the record at the change of plea hearing in this matter. This
28 Agreement binds only the United States Attorney's Office for the Western District of

1 Washington. It does not bind any other United States Attorney's Office or any other
2 office or agency of the United States, or any state or local prosecutor.

3 DATED this 27th day of October, 2021.

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6 
JEFFREY ZIRKLE
Defendant/

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8 
9 HAROLD MALKIN
10 Attorney for Defendant

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13 SETH WILKINSON
14 Assistant United States Attorney
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