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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Case No. 10-cr-00081-WYD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. OPAS SINPRASONG,

Defendant.

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PLEA AGREEMENT AND STATEMENT OF FACTS  
RELEVANT TO SENTENCING

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The United States of America (the government), by and through James O. Hearty, Assistant United States Attorney for the District of Colorado, and the defendant, OPAS SINPRASONG, personally and by his counsel, Michael S. Axt, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing, pursuant to D.C. COLO. LCrR 11.1.

**I. PLEA AGREEMENT**

The defendant agrees to plead guilty to Count 11 of the Indictment which charges him with Failure to Pay Over Employee Federal Payroll Taxes in violation of 26 U.S.C. § 7202 and Count 57 which charges him with Harboring Illegal Aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii). The defendant also expressly agrees to the forfeiture of assets more fully set forth below. The defendant agrees to restitution beyond the counts

of conviction to include the relevant conduct set forth in this agreement in the estimated amount of \$766,000. The defendant will stipulate to his removal from the United States to Thailand following the completion of a prison sentence if one is imposed.

The parties agree, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), that the appropriate custodial sentence in this case under the factors set forth in 18 U.S.C. § 3553(a) that is sufficient but not greater than necessary to satisfy the goals of sentencing is one year and one day. The United States will file a sentencing statement further justifying its recommended sentence and describing the defendant's cooperation in the government's investigation.

The United States further agrees that: 1) the defendant should receive full credit for acceptance of responsibility under § 3E1.1 without further application to the Court provided that the defendant does nothing inconsistent with accepting responsibility; 2) it will move to dismiss the remaining counts in the indictment against the defendant at the time of sentencing; 3) it will recommend that the defendant be designated to serve his sentence at FCI - Englewood; and 4) no other federal criminal charges will be brought against the defendant based on conduct currently known to the United States. Moreover, the United States has been advised that based on this Plea Agreement: 1) the U.S. Department of Labor, Wage and Hour Division, will not pursue additional civil or administrative action against the defendant or his companies based on information currently known by the United States, and 2) the Internal Revenue Service will not pursue

additional civil or administrative action against the defendant or his companies based on information currently known by the United States.

Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to Title 26, United States Code, Section 7301(a), Title 18, United States Code, Section 982(a)(6)(A), Title 8, United States Code, Section 1324(b), and Title 28, United States Code, Section 2461(c), whether in the possession or control of the United States, or in the possession or control of the defendant or defendant's nominees, or elsewhere. The assets to be forfeited specifically include, but are not limited to:

- 1) real property, including all attachments thereto, located at 3180 29<sup>th</sup> Street, Boulder, Colorado 80301;
- 2) real property, including all attachments thereto, located at 3030 O'Neal Parkway, #R41, Boulder, Colorado 80301; and
- 3) a money judgment in the amount of \$766,000, which represents proceeds traceable to the defendant's offenses.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government.

Defendant further agrees to take all steps necessary to locate the real property subject to forfeiture and to pass title to such property to the United States before the defendant's sentencing. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers. To that end, defendant agrees fully to assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee.

Substitution of Assets to Satisfy the Money Judgment. The defendant agrees that the United States is not limited to forfeiture of the property described above, but may also pursue the forfeiture of substitute assets in satisfaction of the money judgment described above. The United States agrees that the defendant may choose which of his assets will serve as substitute assets for the money judgment up to the value of the forfeiture money judgment entered against him at the time of sentencing. The defendant agrees the United States will obtain a preliminary order of forfeiture against these substitute assets, and file a *lis pendens* against them based on that order. However, the defendant and United States

agree that the United States will not execute a final order against these assets until at least six months after sentencing, thereby allowing the defendant to satisfy the money judgment with proceeds from the sale of the substitute assets, other assets, or other legitimate sources. The government will release any *lis pendens* it files against substitute assets if the defendant satisfies the entire money judgment with other assets. This Court shall retain jurisdiction to settle any disputes arising from application of this clause.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture. However, the United States agrees to notify all known victims of their right to petition the Attorney General for the remission of funds forfeited in this case. To the extent that any victims are remitted forfeited funds by grant of the Attorney General, this amount will be credited toward the defendant's restitution obligation. The parties estimate that the restitution amount will be approximately \$766,000.

## **II. ELEMENTS OF THE OFFENSE**

### **Count 11 - Failure to Pay Over Employee Federal Payroll Taxes (26 U.S.C. § 7202)**

*First:* that the defendant had a duty to collect, and/or truthfully account for, and pay over a tax;

*Second:* that the defendant failed to collect, or truthfully account for, and/or pay over the tax;

*Third:* that he did so willfully

Count 57 - Harboring Illegal Aliens (8 U.S.C. § 1324(a)(1)(A)(iii))

*First:* the individual identified in Counts 57 of the indictment, remained in, came to, or entered the United States in violation of the law;

*Second:* that the defendant knowingly concealed, harbored, or shielded from detection that illegal alien within the United States; and

*Third:* that the defendant either knew or acted in reckless disregard of the fact that the illegal alien remained in, came to, or entered the United States in violation of the law.

**III. STATUTORY PENALTIES**

The maximum statutory penalty for a violation of 26 U.S.C. § 7202 as charged in Count 11 is: not more than five years imprisonment; not more than a \$10,000 fine, or both; not more than three years of supervised release; a \$100 special assessment fee; plus restitution. The maximum statutory penalty for a violation of 8 U.S.C.

§ 1324(a)(1)(A)(iii) as charged in Count 57 is: not more than 10 years imprisonment, not more than a \$250,000 fine, or both; not more than three years of supervised release; a \$100 special assessment fee; plus restitution.

The conviction 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. Because the defendant is an alien, the conviction may cause the defendant to be deported or confined indefinitely if there is no country to which the defendant may be deported.

A violation of the conditions of probation or supervised release may result in a separate prison sentence.

**IV. STIPULATION OF FACTUAL BASIS AND FACTS  
RELEVANT TO SENTENCING**

The parties agree that there is no dispute as to the material elements which establish a factual basis of the offense of conviction.

Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties believe are relevant, pursuant to §1B1.3, for computing the appropriate guideline range. To the extent the parties disagree about the facts relevant to sentencing, the statement of facts identifies which facts are known to be in dispute at the time of the plea. (§6B1.4(b))

The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the advisory guideline computation (§1B1.3) or to sentencing in general (§1B1.4). Nor is the Court or Probation precluded from the consideration of such facts. In "determining the factual basis for the sentence, the Court will consider the stipulation [of the parties], together with the results of the pre-sentence investigation, and any other relevant information." (§6B1.4 Comm.)

The parties agree that the government's evidence would show that the date on which conduct relevant to the offense (§ 1B1.3) began is in 2001.

The parties agree that the government's evidence would be:

Background of the Restaurant Businesses

The defendant was a citizen of Thailand who was granted E2 Non-Immigrant Principal Investor status in the United States. Such status allowed the defendant, as a foreign national, a temporary visa to come to the United States to direct and develop a business investment. In 1991, the defendant formed OSL Corporation (OSL), a for-profit Colorado corporation. He was Vice-President of OSL and his wife, Ladda Sinprasong, was listed as President. OSL did business as “Sumidas” and “Siamese Plate” a Thai and Japanese restaurant located in Boulder, Colorado. In 1999, the defendant formed PSL Corporation, a for-profit Colorado corporation. He was President of PSL and his wife, was listed as Vice-President. PSL did business as “Siamese Plate on the Go”, a Thai and Japanese restaurant with locations in Boulder, Broomfield, and Louisville, Colorado. The defendant exercised control over OSL and PSL’s business affairs and the day-to-day operation of the restaurants, including controlling all of OSL and PSL’s bank accounts and the hiring and termination of employees.

The defendant, as the operator of OSL and PSL, was required by federal law to withhold, truthfully account for, and pay over payroll taxes from his employees’ paychecks including federal income taxes, Social Security taxes, and Medicare taxes (often referred to as Federal Insurance Contribution Act or “FICA” taxes). He was also required to make deposits of their payroll taxes to the Internal Revenue Service on a periodic basis and to file an Employer’s Quarterly Federal Income Tax Return (Form 941) following the end of each quarter setting forth the total amount of wages and other



compensation subject to withholding; the total amount of income tax withheld; the total amount of Social Security and Medicare taxes due; and the total tax deposits.

#### Recruitment of Thai Employees

From 2001 through 2008, the defendant sponsored Thai nationals' admission to the United States as specialty workers for his restaurants under the E2 investor program. In doing so, the defendant claimed in immigration applications that these workers possessed specialized skills that were essential to the efficient operation of his business. Thai employees were admitted to the United States as E2 Essential Employees typically for a term of two years which term could be extended for an indefinite number of two-year terms. As part of his recruitment of Thai workers, the defendant required prospective Thai employees to enter into a two-year employment contract which outlined the terms of employment, identified the employee's monthly salary, and that lodging would be provided by the defendant. The employment contracts that he required the Thai employees to enter typically included provisions that: a) required the employee to pay the defendant a "bond" of 50,000 Thai baht (approximately \$1,500 USD); b) provided that the employee was liable to the defendant for a penalty of 600,000 Thai baht (approximately \$18,000 USD) if the employee violated a term of the contract or caused damages to the defendant and the employee was required to obtain a personal guarantor in Thailand, who also entered into a contract with the defendant, making the guarantor liable for the penalty if the employee violated a term of the contract or caused damages; c) required the employee to pay a \$3,000 dollar "visa preparation fee", which employees

were to pay after arriving in the United States in addition to other fees. The defendant asserts that he imposed these conditions in an effort to prevent the Thai employees, whom he recruited and sponsored for entry into the United States, from leaving his employ to seek other employment. The defendant notes further that his original agreement with the Thai workers was that they would be paid a salary based upon the number of shifts worked rather than an hourly wage.

After the Thai employees arrived in the United States, the defendant typically directed them to start work at his restaurants and he paid them with non-payroll checks after deducting portions of the \$3,000 "visa preparation fee" and other fees from the payment. Once these fees had been fully paid through such deductions, which typically took between three and four months, the defendant helped the Thai employees obtain a Social Security Number and then started to report their wages and placed them on the official payroll of OSL or PSL.

#### Failure to Report Wages Paid to Thai Employees

From at least September 2002 and continuing through June 2009, the defendant caused the false reporting of total wages on OSL's and PSL's Employer's Quarterly Federal Tax Returns - Form 941. These tax returns were filed each quarter with the IRS as required but were materially false in that they failed to report the total wages paid to the Thai employees of OSL and PSL. By failing to report all of the wages paid to the Thai employees, the defendant evaded paying the employer's portion of the FICA taxes due and owing on the unreported wages which resulted in \$81,877.98 in tax evaded. He

also failed to collect and account for and pay over to the IRS all of the employee's portion of the FICA taxes due and owing on the unreported wages which resulted in an additional \$81,877.98 in tax evaded. With respect to Count 11, for the quarter ending March 31, 2004, Sinprasong willfully failed to report wages he paid to his employees of PSL that resulted in his failure to collect and truthfully account for \$4,348.53 of the employees' portion of FICA taxes due and owing to the IRS.

Dual Payroll System and Failure to Pay Overtime Wages

The defendant directed the Thai employees to work substantially more than 40 hours in a workweek but did not pay them the premium rate for the overtime hours worked as required by federal law. He did not tell the employees that he recruited from Thailand, that he was legally required to pay them not less than one and one-half times the regular rate for hours they worked in excess of 40 hours a workweek. Sinprasong typically directed the Thai workers to work between 26 and 32 hours of overtime in a workweek without paying the overtime rate. He also directed the Thai employees to clock out when they were still working at the restaurants to ensure that each employee's timecard did not document that the employee worked more than 80 hours in a two-week period.

Sinprasong used a dual payroll system for the Thai employees where he paid them with payroll checks that reflected only 80 hours worked in each two-week period rather than the actual hours worked by the Thai employees which typically was between 132 and 144 hours in the two-weeks. He paid the Thai workers with a separate additional non-

payroll check each pay period that was referred to as a “corporate check” which was for the balance of wages for the Thai employees according to an internal accounting of the number of shifts worked by each worker.

As a result, Sinprasong avoided paying the Thai employees at a premium rate for the overtime the workers worked during each pay period by issuing the separate “corporate check” which was not forwarded to the payroll company ~~or the accountants~~ that Sinprasong used in the operation of his restaurant businesses. He also failed to report the wages paid the Thai employees in the “corporate checks” to the IRS and failed to withhold FICA taxes and Income taxes from those wages paid.

Handwritten signature and initials, possibly "S. Sinprasong" or similar, written in black ink.

Sinprasong had individual income tax returns prepared for the Thai employees and he used his address on the returns. When the Thai employees’ income tax refund checks were received from the IRS, he directed the Thai employees to provide the tax refunds to him. Also, when Thai employees received economic stimulus checks from the federal government in 2008, Sinprasong deducted the amount of the federal stimulus checks from the wages he owed those Thai employees.

#### Harboring Illegal Aliens

Sinprasong also sponsored 10 spouses of Thai employees as derivatives of the E2 Specialty Workers. In visa applications, Sinprasong stated that the derivative spouses did not intend to work in the United States and they were not authorized to work. However, the defendant employed those alien spouses knowing that they were not authorized to work and paid them in a manner to conceal the fact that they were illegally working. He

also provided housing for those workers in either of his properties located at 3180 29<sup>th</sup> Street or 3030 O'Neal Parkway, #R41, in Boulder, Colorado. With respect to Count 57, on March 2, 2007, Sinprasong submitted a visa application for Oranee Siriphala, an alien, in which he represented that she did not intend to work in the United States when he knew that statement was false. He employed Ms. Siriphala on a full-time basis with his company at the time he submitted the application and Ms. Siriphala remained employed with the defendant after receiving her visa which did not authorize her to work. From September 2002 through September 2007, Sinprasong employed and provided housing for Ms. Siriphala knowing that she had entered and remained in the United States in violation of law. He employed Ms. Siriphala illegally and paid her in a manner to conceal her illegal status. He did so for the purpose of private financial gain.

#### **V. SENTENCING COMPUTATION**

Any estimation by the parties regarding the estimated appropriate guideline application does not preclude either party from asking the Court to depart from the otherwise appropriate guideline range at sentencing, if that party believes that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the sentencing guidelines. (§ 5K2.0)

The parties understand that the Court may impose any sentence, up to the statutory maximum, regardless of any guideline range computed, and that the Court is not bound by any position of the parties. (§6B1.4(d)) The Court is free, pursuant to §§6A1.3 and

6B1.4, to reach its own findings of facts and sentencing factors considering the parties' stipulations, the presentence investigation, and any other relevant information. (§6B1.4 Comm.; §1B1.4) The guideline set forth below is simply the parties' best estimate and the government is not bound by the calculation if the Probation Department determines a different advisory guideline range applies.

To the extent the parties disagree about the sentencing factors, the computations below identify the factors which are in dispute. (§6B1.4(b)).

The 2009 Edition of the Sentencing Guidelines is applicable to this case.

Count 11- Failure to Payover Payroll Tax:

A. The base guideline is § 2T1.6 which references the tax table at § 2T4.1. The loss was more than \$80,000 so the base offense level is **16**.

B. Specific offense characteristics: there are no adjustments for specific offense characteristics.

C. There are no: 1) role in the offense, 2) victim-related, or 3) obstruction adjustments.

D. The adjusted offense level would therefore be **16**.

Count 57 - Harboring Illegal Aliens:

A. The base guideline is § 2L1.1 and the base offense level is **12**.

B. Specific offense characteristics: there is a **3** level increase because the offense involved the harboring of more than 6 but less than 24 unlawful aliens.

C. There are no: 1) role in the offense, 2) victim-related, or 3) obstruction adjustments.

D. The adjusted offense level would therefore be **15**.

Multi-Count Adjustment: under § 3D1.2 the counts would not group so there are 2 groups. Under § 3D1.4 there would be 2 units so the higher offense level of 16 would be increased by 2 levels to **18**.

E. The defendant should receive the full **3**-level adjustment for acceptance of responsibility provided that the defendant does not do or say anything inconsistent with accepting responsibility prior to the imposition of sentence. The resulting offense level would therefore be **15**.

F. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court. Based on information currently known to the government, the defendant's estimated criminal history category is a **I**.

G. Assuming the (tentative) criminal history facts of F above, the career offender/criminal livelihood/armed career criminal adjustments would not apply.

H. The guideline range resulting from the estimated offense levels of 15 and the (tentative) criminal history category of I above, is 18 - 24 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the estimated offense level 15 above could conceivably result in a range from 18 months (bottom of Category I), to 51 months (top of Category VI).

I. Pursuant to guideline §5E1.2, assuming the estimated offense level of 15 above, the fine range for this offense would be \$4,000 to \$40,000, plus applicable interest and penalties.

J. Pursuant to guideline §5D1.2, if the Court imposes the term of supervised release, that term shall be at least 2 years and not more than 3 years.


K. Restitution is estimated to be \$766,000 at this time.

## **VI. WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE**

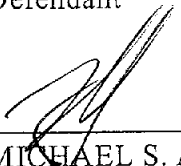
The parties believe the proposed plea agreement is appropriate because all relevant conduct is disclosed, the sentencing guidelines have been taken into account, and the charges to which the defendant has agreed to plead guilty adequately reflects the seriousness of the actual offense behavior.

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

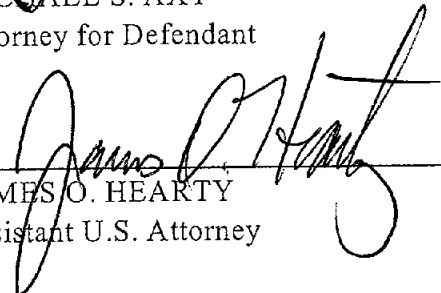
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OPAS SINPRASONG  
Defendant

Date: 10/26/10

  
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MICHAEL S. AXT  
Attorney for Defendant

Date: 10/26/10

  
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JAMES O. HEARTY  
Assistant U.S. Attorney