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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15
16 UNITED STATES

17 Plaintiff,

18 vs.

19 ROBERT HUNTER BIDEN,

20 Defendant.

Case No. 2:23-cr-00599-MCS-1

Hon. Mark C. Scarsi

**DEFENDANT’S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
HIS PRETRIAL MOTIONS**

MEMORANDUM

1
2 **Misdemeanor Plea:** During the March 27, 2024 hearing, the Court asked how a
3 misdemeanor plea would exist with the Diversion Agreement, which seems to encompass
4 tax issues. First, the unusual format—an immunity provision being in the Diversion
5 Agreement and not the Plea Agreement—was the U.S. Attorney’s format and something
6 that they insisted upon. If this format created any ambiguity, that cuts against their
7 position because courts “construe ambiguities in the plea agreement against the
8 government and will use the defendant’s reasonable beliefs at the time of pleading to
9 construe the agreement.” *United States v. Wingfield*, 401 F. App’x 235, 236 (9th Cir.
10 2010). Second, the plea information was filed first and, as Mr. Wise stated in court, there
11 was a good faith understanding that the misdemeanor plea would occur. (3/27/2024
12 Hearing Tr. at 28–29.) The immunity provision would cover any other tax charge. The
13 idea that Mr. Biden would resolve the investigation with a plea to two tax misdemeanors
14 and one diverted gun charge is not inconsistent with the existence and enforceability of
15 the Diversion Agreement and its immunity clause for anything related to any additional
16 tax, gun, or drug issues.

17 **Diversion Agreement Statement of Facts:** During the March 27 colloquy
18 regarding Mr. Biden’s Motion to Dismiss Counts 1–4 for Improper Venue, the Court asked
19 counsel about a sentence in the Diversion Agreement’s Statement of Facts (stating that
20 Mr. Biden “moved to California in the spring of 2018”). Mr. Wise then argued that Mr.
21 Biden’s motion contesting venue undercuts his argument that the Diversion Agreement is
22 in effect. At the time, counsel for Mr. Biden did not direct the Court to the sentence
23 following the one in question, which explained that Mr. Biden’s “move” to California was
24 when he was abusing drugs and was followed shortly thereafter by his enrollment in a
25 specific California rehabilitation program in August 2018. (ECF 25-2 at 11.) The next
26 sentence reads, “He relapsed shortly thereafter, and his crack cocaine use continued when
27 he *returned* to the East Coast in fall of 2018.” *Id* (emphasis added). The type of temporary
28 move described in these sentences neither indicates he became a tax resident of California

1 nor undercuts (or takes a position contrary to) the efficacy and existence of the Diversion
2 Agreement.

3 Date: April 1, 2024

Respectfully submitted,

4 By: /s/ Angela M. Machala

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