

**PARTICIPANT AGREEMENT
POST-PLEA DIVERSION CONVICTION ALTERNATIVES
PROGRAM (CAP)
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Name: _____

Docket No.: _____

Offense(s): _____

INTRODUCTION

You have been selected to participate in the Post-Plea Diversion Track of the Northern District’s Conviction Alternatives Program as part of post-guilty plea diversion. We believe in your ability to succeed in this program and look forward to working with you. By signing this form, you agree to participate in this program.

Participation is entirely voluntary, but will require you to enter guilty plea(s) to one or more of the criminal charges currently pending against you in the case referenced above. The Court will need to make a final determination whether to accept your guilty plea(s) and plea agreement before you can begin participation in the program. If the Court agrees to accept your guilty plea(s) and plea agreement, in doing so approving your participation, and you thereafter successfully complete the program, then, as specified in the plea agreement pursuant to which you enter your guilty plea(s), [those guilty plea(s) will be vacated and the criminal charges against you in the case referenced above will be dismissed with prejudice] [some but not all of the charges may be dismissed and you will receive a sentence that does not include a term of imprisonment]. **[Select alternative that applies, and delete other.]**

PROGRAM BASICS

The program will last at least one year, with the possibility that it may be extended up to an additional year. Participants in the program will have their cases referred to the Program Judicial Officer before whom they will enter guilty pleas pursuant to plea agreements with the United States Attorney’s Office for the Northern District of California (“USAO”). If the Program Judicial Officer accepts a Participant’s guilty pleas and plea agreement, it will constitute final approval for participation in the program, which will include a period of supervision by a Pretrial Services Officer (“PSO”). Participants agree to participate in a drug and alcohol evaluation, and in any and all treatment and testing recommended. In addition to the requirements of actively engaging in any treatment and testing that may be recommended for substance abuse issues, Participants are also required to participate in programs designed to address underlying causes of criminal activity and to comply with all conditions of post-guilty plea diversion that may be required by the plea agreements pursuant to which they entered their guilty plea(s) and by the PSO.

You will be assigned a defense attorney from the Federal Public Defender's Office or the

Northern District's Criminal Justice Act panel. An Assistant United States Attorney ("AUSA") will also be assigned to the program. Both the defense attorney and AUSA will work with the PSO to provide additional support and encouragement for your success in the program.

PROGRAM APPEARANCES

At least once per month, at a time to be determined, you will be required to appear before the Program Judicial Officer to evaluate your progress. The PSO, defense attorney, and AUSA will be present. Progress reports from the PSO will be provided to the Judicial Officer, the defense attorney, and the AUSA. These reports will describe both successes and problems you have experienced. During the court sessions to evaluate your progress, there will be no court reporter present, and court proceedings will not be transcribed. By signing this contract, you waive your right to have a court reporter transcribe the court proceedings at these court sessions. A court reporter will be present to transcribe any contested violation hearing or any contested hearing to determine whether to terminate you from the program.

PROGRAM TREATMENT AND COUNSELING PROGRAMS

An important part of the program will be your participation in substance abuse treatment and counseling programs and/or other programs addressing underlying causes of criminal activity as determined necessary by the PSO and the other members of the Program Team. Treatment and other program providers will be expected to share information regarding your participation and progress in any treatment and counseling programs with all of the members of the Program Team, including the Program Judicial Officer, PSO, defense attorney, AUSA, and any research partner evaluating the program. Treatment and other program providers also may provide input about your participation and progress in your programs.

LIMITED USE OF STATEMENTS MADE DURING PROGRAM APPEARANCES

Another important part of the program is your complete candor during your program appearances. To encourage your candor, your statements will not be used against you in the underlying criminal proceeding or a separate federal criminal proceeding (though statements may be grounds for sanctions within the program). The PSO or any law enforcement officer may conduct an independent investigation based on your admissions, and evidence developed as a result of that investigation may be used in any proceeding, including the underlying criminal proceeding or a separate federal criminal proceeding.

PROGRAM SUPERVISION VIOLATIONS AND SANCTIONS

Program supervision violations and sanctions will ordinarily be handled at the regularly scheduled court session. The Program Judicial Officer, however, can schedule a court session at any time. Sanctions and modifications regarding treatment and other programs also may be handled on an expedited basis with the consent of the parties and the Program Judicial Officer.

If a progress report contains an allegation of noncompliance, you may choose to agree that the allegation is true and waive the traditional protections and procedures afforded to those on pre-trial supervision when they are accused of violating supervision. If you do so, there will be no

hearing on whether the allegation is true and the Program Judicial Officer will decide whether a program sanction is appropriate. As noted above, noncompliance may be handled on an expedited basis outside the presence of the Program Judicial Officer if all parties agree.

Noncompliant behavior by you, the Participant, will result in sanctions. The range of possible sanctions has been drafted broadly to assure that some level of sanction is available for every type of violation. Factors that will influence the type of sanction employed include the seriousness of the violation, the number of violations, and the amount of time you have remained compliant, either before a first violation, or between violations. In addition, an important factor will be whether you voluntarily disclose the violation. Dishonesty on your part will result in enhanced sanctions. Depending on these factors, any of the sanctions listed below -- including termination from the CAP program -- is available. As a general rule, where there are repeat violations, more serious sanctions will be applied. Sanctions may include, but are not limited to:

- Judicial reprimand delivered during program court sessions in front of other program Participants
- Order to attend and observe pre-determined program court sessions
- Order to submit written assignment (for example, write out an explanation for your non-compliant behavior and describe a plan to correct it or write out a list of the special conditions of your post-guilty plea diversion and explain how you violated those conditions and how you plan to avoid similar violations in the future)
- Curfew restriction for up to 30 days
- Increase in frequency of progress hearings before the Program Judicial Officer
- Order to participate in community service as part of the program
- Order to complete a term of home confinement (with conditions that may include alcohol monitors and standard location monitoring with GPS)
- Order to complete a term of up to 30 days at a residential reentry center
- Order to complete a term at a residential substance abuse treatment facility
- Order to spend up to 7 days in jail
- Termination from the program

If appropriate, sanctions may be ordered more than once during the course of the program.

If you admit to the violation, you may be able to complete the sanction and remain in the program. When expedited action is appropriate and the parties agree, a sanction or adjustment in treatment can be imposed through a modification without a court session before the Program Judicial Officer. The PSO's report at the next court session will inform the Program Judicial Officer whether you properly completed the sanction ordered at the last session. Failure to complete ordered sanctions may result in added sanctions, or termination from the program.

If you wish to contest the violation allegation, you may do so. The only permissible contested hearing in the program, however, is a claim of actual innocence of the alleged violation. If you wish to have a contested hearing, the defense attorney will assist you in contesting the violation allegation. The Program Judicial Officer will ultimately decide whether the allegation is true.

It is important to note that the PSO need not wait until your scheduled program appearance to

address problems in supervision. If you fail to abide by directions of the PSO, or if the PSO believes that you have committed other violations of your supervision, the PSO will have discretion to contact you directly to address the violation; to arrive at a proposed method of addressing the violation through discussions with the Program Judicial Officer, defense attorney, and/or AUSA; or to request the issuance by the Program Judicial Officer of a warrant for your arrest.

TERMINATION FROM THE PROGRAM

You may be involuntarily terminated from the program if you fail to participate in treatment or other programs or if you violate the terms of the program or your post-guilty plea diversion -- including failure to appear at court sessions, failure to participate actively in the program, repeated drug use, or a new law violation. Final decisions regarding involuntary termination will be made by the Program Judicial Officer. If you are involuntarily terminated from the program, you will return to regular pretrial supervision and your case will be set for sentencing before the Program Judicial Officer – in imposing sentence, the Program Judicial Officer will not be bound to provide the benefits that your plea agreement would have required had you successfully completed the program.

You may also at any time voluntarily discontinue your participation in the program and have your criminal case set for sentencing before the Program Judicial Officer – again, however, in such an instance, the Program Judicial Officer will not be bound to provide the benefits that your plea agreement would have required had you successfully completed the program.

Whether your termination from the program is voluntary or involuntary, the Program Judicial Officer will be aware of, and can consider in imposing sentence, all conduct that has taken place during your participation in the program, including successes, failures, and sanctions that occurred during your participation in the program.

GRADUATION AND BENEFITS

Upon successful completion of the program, as determined by the Program Judicial Officer and the other members of the Program Team subject to the minimum requirement that, if you are determined to have a substance abuse issue, you have demonstrated the minimum period of sobriety required by the program (generally twelve months of continuous sobriety), you will receive the benefits specified in your plea agreement, which will include [being permitted to withdraw your previously-entered guilty plea(s), with the criminal charges previously pending at the time of your guilty plea(s) dismissed with prejudice] [possible dismissal of some or all of the charges and imposition of a sentence that does not include a term of imprisonment]. **[Select alternative that applies, and delete other.]**

AGREEMENT TO PARTICIPATE

Participant:

I, _____, have read, or someone has read to me in the language I best understand, this Contract and the plea agreement that would be a condition of my participation in the Track 2 Post-Plea Diversion program. I have discussed this Contract and the plea agreement with my attorney and I understand its terms. I have also discussed the program with my attorney, and I understand that program. I voluntarily agree to participate in the program subject to the terms set forth in this Contract and the plea agreement. I understand I can revoke my voluntary participation in the program at any time and that, if I do so, my criminal case will be set for sentencing before the program judicial officer without any obligation to provide me the benefits set forth in the plea agreement for successful completion of the program.

Signature
Typed Name: _____

Date

Program Defense Attorney:

I, _____, the CJA defense attorney or Assistant Federal Public Defender representing the Participant in connection with the Track 2 Post-Plea Diversion program, have discussed the program, the plea agreement that would be a condition of participation in the program, and this Contract with the Participant and the Participant's attorney in the underlying criminal matter. I believe that the Participant understands the program, the terms of the plea agreement that would be a condition of participation in the program, and the terms of this Contract, and that the Participant's agreement to participate in the program subject to the terms of this Contract and the plea agreement that would be a condition of participation in the program is knowingly and voluntarily made.

Signature
Typed Name: _____

Date

Program Assistant United States Attorney:

I, _____, the Assistant United States Attorney representing the United States Attorney's Office for the Northern District of California (the "USAO") in the program, agree to the terms of this Contract on behalf of the USAO and accept the above named Participant into the program subject to the terms of this Contract and the plea agreement that would be a condition of the Participant's participation in the CAP program.

Signature
Typed Name: _____

Date

Program Pretrial Services Officer:

I, _____, the Pretrial Services Officer assigned to the program, accept the above named Participant into the program subject to the terms of this Contract and the plea agreement that would be a condition of the Participant's participation in the program.

Signature
Typed Name: _____

Date

Program Judicial Officer:

Subject to the Court's acceptance of the Participant's guilty plea(s) and plea agreement, the Court hereby accepts the above named Participant into the Track 2 Post-Plea Diversion Program subject to the terms of this Contract and the plea agreement that would be a condition of the Participant's participation in the CAP program.

Signature
Typed Name: _____

Date