

1 **[SELECT OFFICE]**

2

3 UNITED STATES OF AMERICA,) NO. **[CASE NUMBER]**

4 Plaintiff,) PLEA AGREEMENT

5 v.)

6 **[DEFENDANT NAME],**)

7 Defendant.)

8

9 I, **[Defendant's Name]**, and the United States Attorney's Office for the Northern District of

10 California (hereafter "the government") enter into this written Plea Agreement (the "Agreement")

11 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

12 The Defendant's Promises

13 1. I agree to plead guilty to Count(s)___ of the captioned Indictment **[Information,**

14 **Superseding Indictment, Superseding Information]** charging me with [insert charge, *e.g.*, "Wire

15 Fraud," or "Felon-in-Possession of a Firearm"] in violation of ___ U.S.C. § ___. I agree that the

16 elements of the offense[s] are as follows: **[use format: "I knowingly ..." and Ninth Circuit Model**

17 **Criminal Jury Instructions when available]** (1) _____; (2) _____; ...

18 I agree that the statutory penalties are as follows:

- | | | | |
|----|----|---|--|
| 19 | a. | Maximum prison term | ?? years |
| 20 | | [Minimum term if applicable] | ?? years |
| 21 | b. | Maximum fine | \$ _____ [add "twice the gross gain or gross loss, whichever is greater" if an alternative is specified in the statute and alleged in the indictment] |
| 22 | | | |
| 23 | | | |
| 24 | | | |
| 25 | c. | [If applicable] Restitution of at least [X] | \$ _____ |
| 26 | d. | Maximum supervised release term | _____ years |
| 27 | e. | Minimum supervised release term | 3/4/5 years |
| 28 | f. | Mandatory special assessment | \$100 per felony count; [see |

18 U.S.C. § 3013 for misdemeanors, § 3014 for human trafficking and sexual abuse cases, and § 2259A for child pornography cases]

- g. Potential Deportation
- h. Forfeiture [must be included if there are forfeiture allegations]
- i. **Mandatory and discretionary denial of federal benefits upon conviction of drug offenses, 21 U.S.C. § 862 and § 862a.**

Please add any of the following that may be applicable:

[I understand that I am pleading guilty to multiple violations and that the Court may order that my sentence for each violation run consecutively.]

[I understand that under 18 U.S.C. § 924(c) or 18 U.S.C. § 1028A I am subject to a mandatory consecutive sentence of [insert term] years of imprisonment for that violation in addition to any sentence I may receive for the other violation(s) to which I am pleading guilty].

[I understand that the statute I have violated (21 U.S.C. §§ 846, 841(b)(1)(A) or (B)) subjects me to a mandatory minimum prison sentence of [5 or 10] years and a maximum prison sentence of [life or 40 years'] imprisonment and a fine of [\$5 or \$10] million.]

[I understand that I am charged in Count ___ of the captioned Indictment with an offense that involves ___ grams or more of ____. I understand further that I have the right to require the government to prove to a jury beyond a reasonable doubt the quantity of drugs charged in Count ____. If the government should not meet its burden of proving the quantity of drugs charged in Count ____, then the above-described maximum penalties would be lower.]

If defendant is not a U.S. citizen, use the following: I understand and have discussed with my attorney the fact that, if I am not a United States citizen, the conviction[s] in this case makes it practically inevitable and a virtual certainty that I will be removed or deported from the United States, denied United States citizenship, and denied admission to the United States in the future. I understand that while there may be arguments that I can raise in immigration proceedings to avoid or delay removal,

1 removal is presumptively mandatory and a virtual certainty in this case. I further understand that
2 removal and immigration consequences are the subject of a separate proceeding and that no one,
3 including my attorney or the Court, can predict to an absolute certainty the effect of my conviction[s] on
4 my immigration status. I nevertheless affirm that I want to plead guilty regardless of any immigration
5 consequences that my plea[s] may entail, even if the consequences are my automatic removal from the
6 United States, denial of citizenship of the United States, and denial of future admission to the United
7 States. I also acknowledge that there are no identical or substantially similar charges to non-removable
8 offenses to which the government would agree.

9 2. I agree that I am guilty of the offense[s] to which I am pleading guilty, and I agree that
10 the following facts are true: [FACTUAL BASIS should accurately and completely describe defendant’s
11 role in offense based on evidence the government can establish; include defendant’s agreement with key
12 statutory elements and Guidelines enhancements if appropriate (e.g., “I agree that the monetary
13 transaction was in, or in some way or degree affected, interstate commerce.”)]. The factual basis should
14 also support forfeiture allegations if criminal forfeiture is contemplated as part of the Agreement. The
15 factual basis must include facts to support each element of the offense(s) of conviction.]

16 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the
17 rights to:

- 18 a) Continue to plead not guilty and require the government to prove the elements of
19 the crime(s) beyond a reasonable doubt;
- 20 b) A speedy and public trial by jury at which I would have the assistance of an
21 attorney;
- 22 c) Confront and cross-examine adverse witnesses;
- 23 d) Remain silent and have no adverse inferences drawn from the decision not to
24 testify;
- 25 e) Testify; and
- 26 f) Present evidence, pursue affirmative defenses, and have witnesses testify on my
27 behalf.

1 **[In rare cases where applicable concerning venue:** To the extent the offense[s] to which I am
2 pleading guilty were committed, begun, or completed outside the Northern District of California,
3 I knowingly, voluntarily, and intelligently waive, relinquish, and give up: (a) any right that I
4 might have to be prosecuted only in the district where the offense[s] to which I am pleading
5 guilty were committed, begun, or completed; and (b) any defense, claim, or argument I could
6 raise or assert based upon lack of venue with respect to the offense[s] to which I am pleading
7 guilty.]

8 I also agree to give up my rights to move to suppress evidence raise other Fourth or Fifth
9 Amendment claims, demand or receive further discovery from the government, and to challenge
10 this prosecution on grounds of venue or statute of limitations.

11 4. I agree to give up my right to appeal my conviction, including constitutional challenges
12 to the statute[s] of conviction. I agree to give up my right to appeal the judgment and all orders of the
13 Court. I also agree to give up my right to appeal any aspect of my sentence, including any orders
14 relating to forfeiture and/or restitution, reserving only my right to claim that my sentence violated this
15 plea agreement, applicable law, or the Constitution. I reserve my right to claim that my counsel was
16 ineffective. I understand that this waiver includes, but is not limited to, any and all constitutional or
17 legal challenges to my conviction[s] and guilty plea[s], including arguments that the statute[s] to which I
18 am pleading guilty [is/are] unconstitutional, and any and all claims that the statement of facts provided
19 herein is insufficient to support my plea[s] of guilty.

20 5. I agree not to file any collateral attack on my conviction or sentence, including a petition
21 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was
22 ineffective.

23 6. I agree not to ask the Court to withdraw my guilty plea[s] at any time after it is [**they are**]
24 entered. In the event I violate any of the terms of the Agreement, I agree that the facts set forth in
25 Paragraph 2 of this Agreement and, if applicable, the fact that I made a sworn admission to them in a
26 previous court proceeding, shall be admissible against me in any subsequent proceeding, including at
27 trial. In any subsequent proceeding conducted after I violate any of the terms of the Agreement, I
28

1 expressly waive any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the
2 facts set forth in Paragraph 2 of the Agreement and, if applicable, the fact that I made a sworn admission
3 to them at a previous court proceeding.

4 7. I understand that the Court must consult the United States Sentencing Guidelines and
5 take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I
6 also understand that the Court is not bound by the Guidelines or the parties' calculations below; the
7 Court may conclude that a higher Guidelines range applies to me, and, if it does, I will not be entitled,
8 nor will I ask, to withdraw my guilty plea[s]. I further agree that regardless of the sentence that the
9 Court imposes on me, I will not be entitled, nor will I ask, to withdraw my guilty plea[s]. I agree that
10 the Sentencing Guidelines offense level should be calculated as set forth below, and that I will not
11 request a downward departure under the Sentencing Guidelines from that offense level. **I also agree**
12 **that I will only seek a downward variance consistent with the provisions in the "Veterans Court"**
13 **section of this paragraph 7, below. [WHERE APPLICABLE FOR § 841/846/960/963 CASES: The**
14 **parties agree that a two-level reduction, see U.S.S.G. § 2D1.1(b)(18), is appropriate if I satisfy the**
15 **requirements of U.S.S.G. § 5C1.2 at the time of sentencing. I acknowledge that, by this agreement, I am**
16 **receiving the benefit of any such modification of the Sentencing Guidelines. I acknowledge that the**
17 **Guidelines computation set forth below does not incorporate this two-level reduction.]**

18 **[Optional: Except with respect to the application of U.S.S.G. § 4C1.1, below,]** the
19 parties have reached no agreement regarding my Criminal History Category.

- 20 a. Base Offense Level, U.S.S.G. § _____: ??
- 21 b. Specific offense characteristics under U.S.S.G. Ch. 2 + ?
22 (e.g., amount of loss, use of firearm)
- 23 c. Adjustments under U.S.S.G. Ch. 3 (e.g., role in the offense)
- 24 d. Acceptance of Responsibility: - ??
25 If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a
26 **two/three-level** reduction for acceptance of responsibility, provided that I
27 forthrightly admit my guilt, cooperate with the Court and the Probation
28 Office in any presentence investigation ordered by the Court, and continue
to manifest an acceptance of responsibility through and including the time
of sentencing.
- e. [If applicable Adjustments under U.S.S.G. Ch. 4 (e.g., zero-point offender) ??

1 f. Adjusted Offense Level: ??

2 Veterans Court. I agree to participate in the Veterans Court (VC) program, pursuant to the terms
3 set forth in the VC Program Contract for Participation attached as Exhibit A.

4 If I successfully complete the VC program, the parties agree that an appropriate disposition of
5 this case under the Sentencing Guidelines and 18 U.S.C. § 3553(a) is as follows: The government will
6 join in a motion to permit the defendant to withdraw the guilty plea entered by the defendant pursuant to
7 this agreement, and the government will move to dismiss the count[s] to which defendant entered a
8 guilty plea and any remaining counts of the [Insert Charging Document]. The defendant understands
9 and agrees that, as a condition of the government's motion to dismiss the criminal charges in this case,
10 the defendant will consent to an order requiring that, during the 24 months after the dismissal of the
11 criminal charges, the defendant will pay restitution as set forth in paragraph 9, below.

12 If I do not successfully complete the VC program, I agree to proceed to a prompt sentencing
13 wherein I will not contest the Guidelines calculations set forth in paragraph 7, above, and the parties will
14 be free to recommend whatever sentence they deem appropriate. I understand and agree that the
15 government may oppose any requested variance in such a circumstance. I understand and agree that I
16 will remain bound by all terms of this plea agreement even if I do not successfully complete the VC
17 program, and I specifically agree that I will not move to withdraw my plea on such basis.

18 8. I agree that regardless of any other provision of this Agreement, the government may and
19 will provide the Court and the Probation Office with all information relevant to the charged offense[s]
20 and the sentencing decision, including Victim Impact Statements. I understand that the Court and
21 United States Probation Office are not parties to this Agreement and are not bound by it.

22 **[FOR CASES WITH NO RESTITUTION (e.g., 1326, most 922(g), and most 841/846 cases),**
23 **USE THE HIGHLIGHTED PARAGRAPH AND DELETE THE REMAINDER.] OTHERWISE,**
24 **USE EVERYTHING (INCLUDING THE HIGHLIGHTED PARAGRAPH)]**

25 9. I agree that I will make a good-faith effort to pay any fine, forfeiture, or restitution I am
26 ordered to pay. I agree to pay the special assessment at the time of sentencing.

27 I agree to pay full restitution for all losses caused by all the schemes or offenses with which I
28

1 was charged in this case, and I understand that the amount of restitution will not be limited to the loss
2 attributable to the count[s] to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I
3 understand that the Court will not consider my economic circumstances in determining the restitution
4 amount. I agree to pay restitution in an amount to be set by the Court when ordered, but in no event less
5 than **[insert amount]**, and may be as high as **[insert amount]** based on information known to the parties
6 at this time, and may be higher depending on evidence available at the time of sentencing. I agree that,
7 if I successfully completed the VC program as referenced in paragraph 7, I will consent, as a condition
8 of the government’s motion to dismiss charges, to an order requiring that I pay restitution in full during
9 the 24 months after dismissal.

10 Any restitution payments shall be paid through the Office of the Clerk of the District Court by
11 bank or cashier’s check or money order made payable to the “Clerk, United States District Court,” or
12 through www.pay.gov, referencing CCAM Number [DCANxxxCR0xxxxxxxxx; ask FLP to confirm
13 Defendant’s CCAM # if you are unsure of it]. **[OPTIONAL: Further, the restitution described above
14 shall be paid for the benefit of the following victim(s): insert name and amount]**

15 I understand that the restitution described above creates a lien in favor of the United States on all
16 property and rights to property I may possess upon entry of judgment and continues for the later of 20
17 years from the entry of judgment or 20 years after release from imprisonment or until the debt is paid in
18 full. I further understand the government will record a notice of the lien in any county where I reside or
19 have property. I further understand that this order of restitution cannot be discharged in bankruptcy and
20 that if I default on the payment of a fine or restitution, the Court may revoke probation or a term of
21 supervised release, modify the terms or conditions of probation or supervised release, resentence me,
22 hold me in contempt of court, order the sale of property, enter or adjust a payment schedule, or take any
23 other action necessary to obtain compliance.

24 At any time before or after a judgment is entered in this case, I agree to complete, under penalty
25 of perjury, a financial statement provided by the U.S. Attorney’s Office and to update that statement
26 with material changes within seven days of the change. I understand that I must identify all assets and
27 financial interests valued at more than \$1,000. I further understand that these assets and financial
28

1 interests include all assets and financial interests in which I have an interest [**OR in which I had an**
2 **interest prior to _____**], direct or indirect, whether held in my own name or in the name of
3 another, in any property, real or personal.

4 I agree to surrender assets I obtained as a result of my crimes, and release funds and property
5 under my control in order to pay any fine, forfeiture, or restitution. I further agree to notify the Financial
6 Litigation Program (FLP) of the United States Attorney's Office before transferring any interest in
7 property owned directly or indirectly by me, including any interest held or owned under any other name
8 or entity, including trusts, partnerships, and/or corporations. I also agree to notify the FLP of any
9 interest in property I may obtain, directly or indirectly, which is valued at more than \$1,000, and which
10 includes any interest obtained under any other name, or entity, including a trust, partnership, or
11 corporation, after the execution of this Plea Agreement until the fine or restitution is paid in full.

12 I agree that any fine, forfeiture, or restitution imposed by the Court against me will be due
13 immediately and subject to immediate enforcement by the government as authorized by 18 U.S.C.
14 § 3613. I further understand that the government may seek immediate collection of the entire fine,
15 forfeiture, or restitution from any assets without regard to any schedule of payments imposed by the
16 Court or established by the Probation Office and that monetary penalties imposed by the Court will be
17 submitted to the Treasury Offset Program so that any federal payment or transfer of returned property I
18 receive may be offset and applied to federal debts.

19 10. I agree not to commit or attempt to commit any crimes before sentence is imposed or
20 before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not
21 to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the
22 government; and not to fail to comply with any of the other promises I have made in this Agreement.

23 **[OPTIONAL: I agree not to have any contact with any victims or witnesses in this case, either**
24 **directly or indirectly, before and after I am sentenced. This includes, but is not limited to,**
25 **personal contact, telephone, mail, or electronic mail contact, or any other written form of**
26 **communication, and includes any harassing, annoying, or intimidating conduct by me directed to**
27 **any victims or witnesses. I agree that the Court may also include this no-contact provision as a**
28

1 **condition of my supervised release term.]** I agree that if I fail to comply with any promises I have
2 made in this Agreement, then the government will be released from all of its promises in this
3 Agreement, including those set forth in The Government’s Promises Section below, but I will not be
4 released from my guilty plea[s].

5 11. **[OPTIONAL: If the defendant pleads to a count to which forfeiture applies:] I agree**
6 **to forfeit my interest in the following property (hereinafter “subject property”):**

- 7 a. _____
- 8 b. _____
- 9 c. _____

10 **I admit that the subject property [insert language from statute which provides the theory**
11 **of forfeiture, e.g., was proceeds from SUA; facilitated the crime; was involved in the offense], and**
12 **thus is forfeitable to the United States pursuant to the provisions of [insert applicable forfeiture**
13 **statute of which there are many, e.g., 18 U.S.C. § 982; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C.**
14 **§ 2461(c); 18 U.S.C. § 924(d); 18 U.S.C. § 2253; 21 U.S.C. § 853] and the procedures outlined in**
15 **Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853. I relinquish any and**
16 **all right, title, and interest I may have in the subject property and agree that such right, title, and**
17 **interest can be forfeited to the United States without further notice to me. I also agree I will not**
18 **contest any administrative or judicial forfeiture proceeding (whether criminal, civil, state or**
19 **federal) that may be brought against said property. I further agree to waive all constitutional and**
20 **statutory challenges in any manner (including direct appeal, habeas corpus, or any other means)**
21 **to any forfeiture carried out in accordance with this Agreement on any grounds, including that the**
22 **forfeiture constitutes an excessive fine or punishment or that the forfeiture proceeding was**
23 **brought in violation of the statute of limitations, but, consistent with paragraph 5, I reserve my**
24 **right to claim that my counsel was constitutionally ineffective.**

25 **[If destruction of firearms is involved:]**

26 **I agree to abandon any interest that I may have and consent to the forfeiture, destruction**
27 **and/or any other lawful and appropriate disposition of all firearms or contraband seized by any**
28

1 law enforcement agency from my possession, or which were in my direct or indirect control,
2 including but not limited to _____.

3 [Consult with AFU about seeking a money judgment; if so, insert the following]

4 I agree that I personally obtained and acquired \$X in criminal proceeds from the violations
5 in Counts __ and __ to which I am pleading guilty and I agree to the entry of a forfeiture money
6 judgment in that amount (the “Forfeiture Money Judgment”). I admit that the Forfeiture Money
7 Judgment constitutes proceeds from [insert applicable count of conviction] and thus is forfeitable
8 to the United States pursuant to the provisions of [insert appropriate forfeiture statute, *e.g.*, 18
9 U.S.C. § 982] and the procedures outlined in Rule 32.2 of the Federal Rules of Criminal Procedure
10 and 21 U.S.C. § 853. I admit that because of my own acts or omissions, the proceeds I originally
11 obtained cannot be located upon the exercise of due diligence or have been placed beyond the
12 jurisdiction of the Court. As such, I agree that the procedures set forth in 21 U.S.C. § 853(p)(2)
13 are applicable.

14 I agree I will not contest any forfeiture proceeding that may be brought pursuant to this
15 Agreement. I further agree to waive all constitutional and statutory challenges in any manner
16 (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in
17 accordance with this Agreement on any ground, including that the forfeiture constitutes an
18 excessive fine or punishment or that the forfeiture proceeding was brought in violation of any
19 statute of limitations.

20 I agree to make payment to the United States of the entire amount of the Forfeiture Money
21 Judgment. I agree that all payments I make towards the Forfeiture Money Judgment shall be
22 made by certified or bank check, payable to the “United States” and sent by overnight delivery to
23 the Chief of the Asset Forfeiture Unit, 450 Golden Gate Ave, 11th Floor, San Francisco, CA 94102,
24 with the criminal docket number noted on the face of the check. I agree to assist fully the
25 government in effecting the payment of the Forfeiture Money Judgment.

26 12. [OPTIONAL: WAIVER OF RETURN OF DIGITAL DATA] Understanding that
27 the government has in its possession digital devices and/or digital media belonging to and seized
28

1 from me, I waive any right to the return of digital data contained on those digital devices and/or
2 digital media and agree that if any of these digital devices and/or digital media are returned to me,
3 the government may delete all digital data from those digital devices and/or digital media before
4 they are returned to me.

5 13. I agree that this Agreement contains all of the promises and agreements between the
6 government and me, and I will not claim otherwise in the future. This Agreement supersedes any prior
7 understandings, promises, or conditions between the government and me. No modification of this
8 Agreement shall be effective unless it is in writing and signed by all parties.

9 14. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of
10 California only, and does not bind any other federal, state, or local agency.

11 The Government's Promises

12 15. **[If applicable]** The government agrees to move to dismiss any open charges pending
13 against the defendant in the captioned Indictment **[Information, Superseding Indictment, or whatever**
14 **charging document contains charges that will be dismissed]** at the time of sentencing.

15 16. The government agrees not to criminally prosecute the defendant for any additional
16 violation known to the government at the time of this agreement that is related to the
17 [scheme/conspiracy/possession/distribution] charged in the [specify charging document]. Defendant
18 understands that this paragraph (1) does not provide protection from prosecution for criminal tax
19 violations (including conspiracy to commit such violations), for which the government cannot and does
20 not make any agreement, and (2) does not bar the use of such conduct as a predicate act or basis for a
21 sentencing enhancement in a subsequent prosecution, including a prosecution pursuant to 18 U.S.C.
22 § 1961 et seq. Defendant understands that the government is free to criminally prosecute defendant for
23 any other statutory violation(s), other unlawful past conduct, or any unlawful conduct that occurs after
24 the date of this agreement. Defendant agrees that, at the time of sentencing, the Court may consider the
25 uncharged conduct in determining the applicable Sentencing Guidelines range, the propriety and extent
26 of any departure from that range, and the sentence to be imposed after consideration of the Sentencing
27 Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).]

1 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all
2 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my
3 client's decision to plead guilty is knowing and voluntary.

4
5 Dated: _____

[Defense Counsel (ALL CAPS)]
Attorney for Defendant

7
8 **[If applicable]**

9 INTERPRETER CERTIFICATION

10 I, _____, hereby certify that I am a certified _____ language
11 interpreter and that I accurately translated this Agreement to the defendant.

12
13 Dated: _____

Interpreter's Signature