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8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14 v.  
15 ERNESTO ENCINAS,  
16  
17 Defendant.

Case No. 14CR0344-MMA

PLEA AGREEMENT

18 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
19 AMERICA, through its counsel, Cindy M. Cipriani, Acting United States  
20 Attorney, and Timothy C. Perry, Assistant United States Attorney, and  
21 Defendant, ERNESTO ENCINAS, with the advice and consent of Jeremy  
22 Warren, counsel for Defendant, as follows:

23 **I**

24 **THE PLEA**

25 Defendant agrees to waive Indictment and plead guilty to a two-  
26 count Information to be filed in the above-captioned case.

27 The Government agrees not to prosecute Defendant thereafter for  
28 any conduct involving, in principal part, violations of Title 2,  
United State Code, Sections 441e and 441f, or Title 18, United States  
Code, Section 1519 occurring prior to January 1, 2014, or any

Plea Agreement

Def. Initials EW

1 provision of Title 26 of the United States Code occurring prior to  
2 January 1, 2013, unless Defendant breaches the plea agreement or the  
3 guilty plea entered pursuant to this agreement is set aside for any  
4 reason. Defendant expressly waives all defenses to the reinstatement  
5 of any charges dismissed pursuant to this agreement.

6 **II**

7 **NATURE OF THE OFFENSE**

8 A. **ELEMENTS EXPLAINED**

9 Defendant understands that the offenses to which Defendant is  
10 pleading guilty have the following elements:

11 **Count 1 - Conspiracy**

12 1. Beginning on a date unknown, but no later than 2011, and  
13 continuing through December 2013, there was an agreement  
14 between two or more persons to commit at least one of the  
15 following three crimes:

- 16 a. to knowingly and willfully make foreign national  
17 contributions and expenditures, aggregating \$25,000 and  
18 more during a calendar year;
- 19 b. to knowingly and willfully make contributions to a  
20 candidate for federal office in the names of other  
21 persons, aggregating \$25,000 and more during a calendar  
22 year; and
- 23 c. to knowingly falsify a record with the intent to  
24 impede, obstruct and influence the investigation and  
25 proper administration of a matter within the  
26 jurisdiction of the Federal Bureau of Investigation in  
27 violation of Title 18, United States Code, Section  
28 1519.

1 2. Defendant became a member of the conspiracy knowing of at  
2 least one of its objects and intending to help accomplish  
3 it; and

4 3. One of the members of the conspiracy performed at least one  
5 overt act for the purpose of carrying out the conspiracy.

6 Count 2 - False Return

7 1. Defendant caused to be made and filed a tax return for the  
8 year 2011 that he knew contained false information as to a  
9 material matter;

10 2. The return contained a written declaration that it was being  
11 signed subject to the penalties of perjury; and

12 3. In filing the false return, Defendant acted willfully.

13 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

14 Defendant has fully discussed the facts of this case with defense  
15 counsel. Defendant has committed each of the elements of the crime,  
16 and admits that there is a factual basis for this guilty plea.  
17 Defendant agrees that the Government could prove the following facts,  
18 and that the following facts are true and undisputed:

19 Facts Related to Count 1

20 1. At all relevant times, Defendant was in the business of  
21 providing security and security consulting services. Prior  
22 to 2014, including between 2011 and 2013, Defendant managed  
23 the security detail of Jose Susumo Azano Matsura ("Azano"),  
24 who is identified in the information as the "Foreign  
25 National."

26 2. Azano was a foreign national for the purposes of Title 2 of  
27 the United States Code, meaning that he could not lawfully  
28 make any contributions or expenditures, directly or

1 indirectly, in connection with any election at the federal,  
2 state or local level.

3 3. Between approximately 2011 and 2013, there was an agreement  
4 between Defendant, Azano, Ravneet Singh (charged elsewhere),  
5 Marco Polo Cortes (charged elsewhere), a person hereinafter  
6 referred to as "the Straw Donor," and others, to:

7 a. knowingly and willfully make foreign national  
8 contributions aggregating \$25,000 and more during a  
9 calendar year;

10 b. knowingly and willfully make foreign national  
11 expenditures aggregating \$25,000 and more during a  
12 calendar year;

13 c. knowingly and willfully make contributions to a  
14 candidate for federal office in the names of other  
15 persons, aggregating \$25,000 and more during a calendar  
16 year; and

17 d. knowingly falsify a record with the intent to impede,  
18 obstruct and influence the investigation and proper  
19 administration of a matter within the jurisdiction of  
20 the Federal Bureau of Investigation.

21 4. In late 2011, Azano became interested in making  
22 contributions to candidates in connection with elections in  
23 San Diego. Defendant inquired with the representative of  
24 certain political campaigns, who informed him that foreign  
25 nationals cannot donate to political campaigns in the United  
26 States. Defendant reported this to Azano.

27 5. To evade the prohibition on foreign national contributions,  
28 as well as contribution limits imposed by state and

1 municipal law, Azano induced others to make \$500  
2 contributions to "Candidate 1," a candidate for the office  
3 of mayor of San Diego during the 2012 primary election  
4 cycle. Defendant became aware of these contributions during  
5 the course of the conspiracy.

6 6. In inducing these other individuals to make the \$500  
7 contributions, Azano provided them with cash up front,  
8 through intermediaries. Furthermore, in making the \$500  
9 contributions to Candidate 1, these individuals did not  
10 disclose that Azano was the true source of the money.

11 7. Similarly, at about the same time, Defendant gave cash to  
12 employees and friends, directing them to donate it to  
13 Candidate 1. In doing this, Defendant evaded contribution  
14 limits imposed by state and municipal law. Defendant then  
15 told Azano about his donations, in part to demonstrate his  
16 shared commitment to Candidate 1.

17 8. In about February 2012, Azano, Singh and others agreed that  
18 Azano would fund social media services in favor of Candidate  
19 1.

20 9. Azano funded these campaign-related purchases by directing  
21 wire transfers from a Mexico-based company to the bank  
22 account of ElectionMall, Inc. (charged elsewhere), which was  
23 a company controlled by Singh.

24 10. As agreed between the coconspirators, this illegal spending  
25 was kept secret - unreported in the filings of any campaign  
26 or committee.

27 11. In about May 2012, Defendant and others agreed to create,  
28 and did cause to be created, an independent expenditure

1 committee. Azano contributed a total of \$100,000 to the  
2 committee, funding it through a United States-based  
3 corporate entity. Defendant also contributed some money to  
4 the committee.

5 12. Ultimately, this committee made approximately \$114,000 in  
6 expenditures in favor of Candidate 1.

7 13. In June 2012, Defendant emailed Singh to discuss Azano's  
8 election-related spending. Due to the illegal nature of  
9 their conduct, Singh refused to discuss the matter by email,  
10 writing: "I am not responding to this email. Because of the  
11 legal ramifications. Please talk to me . . . in person."

12 14. In about September 2012, Defendant spoke with a  
13 representative of "Candidate 2," who was a candidate for  
14 federal elective office during the 2012 general election  
15 cycle. Together with Cortes, Defendant offered to arrange  
16 campaign financing in connection with Candidate 2's  
17 campaign, but was informed that Azano would have to show  
18 proof of a green card before he could legally contribute.

19 15. Cortes, a professional lobbyist, told Defendant in substance  
20 that they could get in trouble with the Fair Political  
21 Practices Commission for what they were doing. Despite  
22 knowing this, Defendant and Cortes arranged for the Straw  
23 Donor to make contributions to a political party committee  
24 associated with Candidate 2.

25 16. Also in September 2012, the representative of Candidate 2  
26 emailed Cortes a link to the Federal Election Commission's  
27 rules prohibiting foreign national contributions. Cortes  
28

1 forwarded the link to Defendant, writing, "Ernie - Call me  
2 to discuss..."

3 17. As part of the continuing efforts to influence San Diego  
4 elections using illegal foreign money, in about September  
5 2012, Azano met with "Candidate 3," who was a candidate for  
6 the office of mayor of San Diego during the 2012 general  
7 election cycle. Based on the meeting with Candidate 3, and  
8 in consultation with Defendant and Cortes, Azano decided to  
9 provide \$150,000 in campaign financing to Candidate 3.

10 18. Furthermore, Defendant, Azano and Cortes decided to give  
11 most of the money - \$120,000 - to an independent expenditure  
12 committee. The coconspirators decided to give the rest of  
13 the money - \$30,000 - to a political party committee because  
14 they believed a representative of Candidate 3 would  
15 appreciate it.

16 19. Around the same time the coconspirators made this decision,  
17 Azano summoned the Straw Donor to one of his houses. Azano  
18 told the Straw Donor that he would have to donate \$180,000  
19 of his (Azano's) money to certain candidates for elective  
20 office.

21 20. To influence the elections involving Candidate 2 and  
22 Candidate 3, Azano, Defendant and others arranged for the  
23 Straw Donor to write three checks:

24 a. a \$30,000 check to a political party committee  
25 associated with Candidate 2;

26 b. a \$120,000 check to an independent expenditure  
27 committee associated with Candidate 3; and  
28

1 c. a \$30,000 check to a political party committee  
2 associated with Candidate 3.

3 21. In about October 2012, Singh, Defendant and Cortes  
4 approached a representative of Candidate 3. Together, these  
5 coconspirators told the representative that they could  
6 arrange for certain social media spending on behalf of  
7 Candidate 3's campaign. During this and subsequent  
8 conversations, Singh, Defendant and Cortes made it clear to  
9 the representative that Azano would pay for the social media  
10 spending.

11 22. During this same period, Azano transmitted approximately  
12 \$190,000 from a Mexico-based company to the bank account of  
13 ElectionMall, Inc.

14 23. At around this same time, Singh and other purported  
15 employees of ElectionMall set up equipment inside the  
16 campaign offices of Candidate 3. Yet, as agreed between the  
17 coconspirators, Singh, Singh's purported employees,  
18 Defendant, Cortes and others did not charge Candidate 3's  
19 campaign for their services, and did not create an  
20 independent expenditure committee. Instead, as agreed  
21 between the coconspirators, Azano's efforts to finance these  
22 social media services were kept secret - unreported in the  
23 filings of any campaign or committee.

24 24. Several months later, on August 1, 2013, anticipating that  
25 the mayor of San Diego might resign or be recalled from  
26 office, Defendant called a person socially acquainted with  
27 "Candidate 4." Candidate 4 would later become a candidate  
28

1 for the office of Mayor of San Diego during the 2013 special  
2 election cycle.

3 25. Defendant asked the acquaintance of Candidate 4 whether  
4 Candidate 4 would be interested in "foreign investment."  
5 The person said no, emphasizing that "it's got to be clean,  
6 you know." The acquaintance continued on to say Candidate 4  
7 "doesn't bend to everybody, you know, he is his own person .  
8 . . so he's going to be squeaky clean."

9 26. Later that month, in August 2013, the mayor of San Diego  
10 resigned from office, triggering a special election to  
11 replace him. At about this same time, the above-mentioned  
12 acquaintance agreed to act as a confidential informant, and  
13 will hereinafter be referred to as "CI-1."

14 27. On August 28, 2013, CI-1 met with Defendant and Cortes at a  
15 hotel in downtown San Diego. CI-1 asked how Singh had been  
16 paid for the social media services that were contributed to  
17 Candidate 3's campaign. Knowing that Azano's campaign  
18 financing efforts were illegal, Defendant and Cortes did not  
19 answer CI-1's question directly, instead responding, in  
20 substance, that Singh had been paid by a "third party."

21 28. In subsequent meetings that took place in September 2013,  
22 Defendant told CI-1 that Azano had financed other campaigns  
23 in the past and could offer a large amount of money to  
24 Candidate 4's campaign.

25 29. During this same period, Defendant met with Azano to discuss  
26 the upcoming special election, citing Candidate 4 as a  
27 person they might support. Azano said that they probably  
28 should support someone.



1 30. At all times during the conspiracy, Defendant acted  
2 voluntarily and with the knowledge that his conduct was  
3 unlawful. In addition, Defendant acted at all times with  
4 the intent to impede any investigation into the true source  
5 of Azano's campaign funds - a matter that is within the  
6 jurisdiction of the Federal Bureau of Investigation.

7 Facts Related to Count 2

8 31. Defendant resides in the Southern District of California and  
9 is the sole member of Coastline Protection and  
10 Investigations, Inc. ("Coastline PI"). Beginning in about  
11 2011, Azano hired Coastline PI to provide him with a  
12 security detail.

13 32. In exchange for Defendant's services, Azano agreed to pay  
14 Defendant approximately \$20,000-\$30,000 each month. Of the  
15 approximately \$20,000-\$30,000 each month, approximately  
16 \$10,000 was "off the books," and paid in cash. Although  
17 Azano typically paid Defendant \$10,000 in cash each month,  
18 it would sometimes be more and sometimes less.

19 33. As a result of keeping the monthly cash payments "off the  
20 books," Defendant and Azano knew that Defendant did not  
21 report it to the Internal Revenue Service.

22 34. In particular, Defendant did not report the monthly cash  
23 payments to his bookkeeper. As a consequence, each month  
24 Defendant accumulated monthly cash payments that his  
25 bookkeeper did not know about. Defendant used this cash for  
26 various personal and business expenses.

27 35. Based on the bookkeeper's records, Defendant's tax preparer  
28 prepared his tax returns. However, because Defendant had

1 not disclosed his under-the-table cash payments to his  
2 bookkeeper, these tax returns did not reflect the monthly  
3 cash payments that Azano had made to him. Defendant then  
4 reviewed those returns, signing them under penalty of  
5 perjury.

6 36. Thus, on or about October 15, 2012, Defendant submitted to  
7 the Internal Revenue Service a signed 2011 tax return that  
8 falsely stated, on Line 22 (Total Income) that Defendant's  
9 gross income was \$249,669, when in fact he received an  
10 additional approximately \$147,300 in under-the-table cash  
11 payments in exchange for security services. In doing this,  
12 Defendant knowingly and willfully misrepresented a material  
13 fact to the Internal Revenue Service. For the purposes of  
14 sentencing, this resulted in a tax loss of \$69,394.36.

15 37. In total, Defendant failed to report approximately \$147,300  
16 of cash payments in tax year 2011 and approximately \$74,900  
17 in cash payments in tax year 2012 for a total of \$222,200.

18 **III**

19 **PENALTIES**

20 Count 1

21 Defendant understands that the crime to which Defendant is  
22 pleading guilty carries the following penalties:

- 23 A. a maximum 5 years in prison;
- 24 B. a maximum \$250,000 fine or twice Defendant's pecuniary gain  
25 from the offense;
- 26 C. a mandatory special assessment of \$100;
- 27 D. a term of supervised release of not more than 3 years.

28 Defendant understands that failure to comply with any of the

1 conditions of supervised release may result in revocation of  
2 supervised release, requiring Defendant to serve in prison,  
3 upon any such revocation, all or part of the statutory  
4 maximum term of supervised release for the offense that  
5 resulted in such term of supervised release;

6 E. a term of probation of 5 years; and

7 F. an order from the Court pursuant to 18 U.S.C. § 3663 that  
8 Defendant make restitution to the victim(s) of the offense  
9 of conviction, or the estate(s) of the victims(s). Defendant  
10 understands that the Court may also order, if agreed to by  
11 the parties in this plea agreement, restitution to persons  
12 other than the victim(s) of the offense of conviction.

13 Count 2

14 A. a maximum 3 years in prison;

15 B. a maximum \$250,000 fine or twice Defendant's pecuniary gain  
16 from the offense;

17 C. the costs of prosecution;

18 D. a mandatory special assessment of \$100;

19 E. a term of supervised release of not more than one year.  
20 Defendant understands that failure to comply with any of the  
21 conditions of supervised release may result in revocation of  
22 supervised release, requiring Defendant to serve in prison  
23 all or part of the term of supervised release;

24 F. a term of probation of 5 years; and

25 G. an order from the Court pursuant to Title 18, United States  
26 Code, Section 3663 that Defendant make restitution to the  
27 victim(s) of the offense of conviction, or the estate(s) of  
28 the victim(s). Defendant understands that the Court may

1 also order, if agreed to by the parties in this plea  
2 agreement, restitution to persons other than the victim(s)  
3 of the offense of conviction.

4 IV

5 DEFENDANT'S WAIVER OF TRIAL RIGHTS

6 Defendant understands that this guilty plea waives the right to:

- 7 A. Continue to plead not guilty and require the Government to  
8 prove the elements of the crime beyond a reasonable doubt;  
9 B. A speedy and public trial by jury;  
10 C. The assistance of counsel at all stages of trial;  
11 D. Confront and cross-examine adverse witnesses;  
12 E. Testify and present evidence and to have witnesses testify  
13 on behalf of Defendant; and,  
14 F. Not testify or have any adverse inferences drawn from the  
15 failure to testify.

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V

**DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE  
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

The Government represents that any information establishing the factual innocence of Defendant known to the undersigned prosecutor in this case has been turned over to Defendant. The Government will continue to provide such information establishing the factual innocence of Defendant.

Defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if Defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. Defendant acknowledges, however, that by pleading guilty Defendant will not be provided this information, if any, and Defendant also waives the right to this information. Finally, Defendant agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

VI

**DEFENDANT'S REPRESENTATION THAT GUILTY  
PLEA IS KNOWING AND VOLUNTARY**

Defendant represents that:

- A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel and has a clear understanding of the charges and the consequences of this plea. Defendant understands that, by pleading guilty, Defendant may be giving up, and rendered ineligible to receive, valuable government benefits and civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. Defendant further understands that the conviction in this case may subject Defendant to various collateral consequences, including but not limited to deportation, removal or other adverse immigration

1 consequences; revocation of probation, parole, or  
2 supervised release in another case; debarment from  
3 government contracting; and suspension or revocation of a  
professional license, none of which will serve as grounds  
to withdraw Defendant's guilty plea.

4 B. No one has made any promises or offered any rewards in  
5 return for this guilty plea, other than those contained in  
this agreement or otherwise disclosed to the Court.

6 C. No one has threatened Defendant or Defendant's family to  
7 induce this guilty plea.

8 D. Defendant is pleading guilty because in truth and in fact  
9 Defendant is guilty and for no other reason.

10 **VII**  
**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 This plea agreement is limited to the United States Attorney's  
13 Office for the Southern District of California, and cannot bind any  
14 other federal, state or local prosecuting, administrative, or  
15 regulatory authorities, although the Government will bring this plea  
16 agreement to the attention of other authorities if requested by  
17 Defendant.

18 **VIII**  
19 **APPLICABILITY OF SENTENCING GUIDELINES**

20 Defendant understands the sentence imposed will be based on the  
21 factors set forth in 18 U.S.C. § 3553(a). Defendant understands  
22 further that in imposing the sentence, the sentencing judge must  
23 consult the United States Sentencing Guidelines (Guidelines) and take  
24 them into account. Defendant has discussed the Guidelines with  
25 defense counsel and understands that the Guidelines are only advisory,  
26 not mandatory, and the Court may impose a sentence more severe or less  
27 severe than otherwise applicable under the Guidelines, up to the  
28 maximum in the statute of conviction. Defendant understands further

1 that the sentence cannot be determined until a presentence report has  
2 been prepared by the U.S. Probation Office and defense counsel and the  
3 Government have had an opportunity to review and challenge the  
4 presentence report. Nothing in this plea agreement shall be construed  
5 as limiting the Government's duty to provide complete and accurate  
6 facts to the district court and the U.S. Probation Office.

7 **IX**

8 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

9 This plea agreement is made pursuant to Federal Rule of Criminal  
10 Procedure 11(c)(1)(B). Defendant understands that the sentence is  
11 within the sole discretion of the sentencing judge. The Government  
12 has not made and will not make any representation as to what sentence  
13 Defendant will receive. Defendant understands that the sentencing  
14 judge may impose the maximum sentence provided by statute, and is also  
15 aware that any estimate of the probable sentence by defense counsel is  
16 a prediction, not a promise, and is not binding on the Court.  
17 Likewise, the recommendation made by the Government is not binding on  
18 the Court, and it is uncertain at this time what Defendant's sentence  
19 will be. Defendant also has been advised and understands that if the  
20 sentencing judge does not follow any of the parties' sentencing  
21 recommendations, Defendant nevertheless has no right to withdraw the  
22 plea.

23 **X**

24 **PARTIES' SENTENCING RECOMMENDATIONS**

25 **A. SENTENCING GUIDELINE CALCULATIONS**

26 Although the parties understand that the Guidelines are only  
27 advisory and just one of the factors the Court will consider under 18  
28 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly

1 recommend the following Base Offense Level, Specific Offense  
2 Characteristics, Adjustments and Departures:

3 Count 1

4	1. BOL [\$2X1.1/\$2C1.8]	8
5	2. Value [\$2C1.8(b)/\$2B1.1 (greater than \$400,000)]	+14
6	3. Foreign National [\$2C1.8(b)(2)(A)]	+2
7	4. Adjusted Offense Level	24

8 Count 2

9	5. Tax Loss [\$2T1.1(a)/2T4.1]	14
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10 Adjusted Offense Level

11	6. Grouping of Counts 1 and 2 [\$3D1.2(d)]	24
12	7. Acceptance of responsibility [\$3E1.1(b)]	-3
13	8. Combination of Circumstances [\$5K2.0]	-2
13	<b>9. Resulting Offense Level</b>	<b>19</b>

14 B. ACCEPTANCE OF RESPONSIBILITY

15 Notwithstanding paragraph A.3 above, the Government will not be  
16 obligated to recommend any adjustment for Acceptance of Responsibility  
17 if Defendant engages in conduct inconsistent with acceptance of  
18 responsibility including, but not limited to, the following:

- 19 1. Fails to truthfully admit a complete factual basis as  
20 stated in the plea at the time the plea is entered, or  
21 falsely denies, or makes a statement inconsistent  
22 with, the factual basis set forth in this agreement;
- 23 2. Falsely denies prior criminal conduct or convictions;
- 24 3. Is untruthful with the Government, the Court or  
25 probation officer; or
- 26 4. Materially breaches this plea agreement in any way.

27 //

1 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING  
2 THOSE UNDER 18 U.S.C. § 3553

3 The parties agree that Defendant may request or recommend  
4 additional downward adjustments, departures, including criminal  
5 history departures under USSG § 4A1.3, or sentence reductions under 18  
6 U.S.C. § 3553. The Government may oppose any such downward  
7 adjustments, departures and sentence reductions as appropriate.

8 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

9 The parties have **no** agreement as to Defendant's Criminal History  
10 Category.

11 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

12 The parties agree that the facts in the "factual basis" paragraph  
13 of this agreement are true, and may be considered as "relevant  
14 conduct" under USSG § 1B1.3 and as the nature and circumstances of the  
15 offense under 18 U.S.C. § 3553(a)(1).

16 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

17 The parties agree that the Government will recommend that  
18 Defendant be sentenced to the low end of the advisory guideline range  
19 as calculated by the Government pursuant to this agreement.

20 G. STIPULATION TO REMOVAL

21 If Defendant is not a United States citizen or national, either  
22 before or immediately following sentencing, Defendant agrees to an  
23 order of removal from the United States entered by Executive Office  
24 for Immigration Review or authorized Department of Homeland Security  
25 official. Defendant understands that Defendant will not be removed  
26 until Defendant has served any criminal sentence imposed in this or  
27 any other case. Defendant further waives any right to appeal, reopen  
28

1 or challenge the removal order, in this or any subsequent case,  
2 administrative, civil or criminal.

3 H. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

4 1. Special Assessment

5 The parties will jointly recommend that Defendant pay a special  
6 assessment in the amount of \$100.00 per felony count of conviction to  
7 be paid forthwith at time of sentencing. The special assessment shall  
8 be paid through the office of the Clerk of the District Court by bank  
9 or cashier's check or money order made payable to the "Clerk, United  
10 States District Court."

11 2. Fine

12 The Government will recommend a fine. The fine shall be paid  
13 through the Office of the Clerk of the District Court by bank or  
14 cashier's check or money order made payable to the "Clerk, United  
15 States District Court."

16 3. Restitution

17 Defendant shall pay a total of \$69,394.36 in restitution to the  
18 Internal Revenue Service. The parties have no agreement as to a  
19 payment schedule. Any interest to be paid will be calculated by the  
20 IRS, under 26 U.S.C. § 6601 and/or 6621, as of the date of sentencing.  
21 This interest figure does not include any interest that may accrue  
22 under 18 U.S.C. § 3612.

23 The parties understand that defendant will receive proper credit for  
24 the payments made pursuant to this agreement. Defendant agrees to  
25 enter into a closing agreement with the IRS for tax years 2006, 2007,  
26 and 2008 before the time of sentencing. All payments defendant makes  
27 toward any restitution order in this case shall be credited toward the  
28 tax, penalties and interest due in the civil closing agreement.

1 Except as set forth in the previous sentence, nothing in this  
2 agreement shall limit the IRS in its lawful examination,  
3 determination, assessment or collection of any taxes, penalties or  
4 interest due from the defendant for the time periods covered by this  
5 agreement or any other time period. Moreover, neither the existence  
6 of a restitution payment schedule nor the defendant's timely payment  
7 of restitution according to that schedule will preclude the IRS from  
8 administrative collection of any taxes, penalties or interest due from  
9 the defendant.

10 Defendant agrees not to file any claim for refund of taxes or  
11 interest represented by any amount of restitution paid pursuant to  
12 this agreement.

13 Defendant agrees that this agreement, or any judgment, order,  
14 release, or satisfaction issued in connection with this agreement,  
15 will not satisfy, settle, or compromise the defendant's obligation to  
16 pay the balance of any remaining civil liabilities, including tax,  
17 additional tax, additions to tax, interest, and penalties, owed to the  
18 IRS for the time periods covered by this agreement or any other time  
19 period.

20 Defendant understands that he is not entitled to credit with the  
21 IRS for any payment sent to an incorrect address or accompanied by  
22 incomplete or inaccurate information, unless and until any payment is  
23 actually received by the Internal Revenue Service and identified by it  
24 as pertaining to his particular liability.

25 Provisions Regarding Payment:

26 (a) Defendant agrees that, unless the Director of the  
27 Administrative Office of the United States Courts directs him  
28 otherwise, all payments made pursuant to the court's restitution order

1 are to be sent only to the Clerk of the Court at the following  
2 address: Clerk of the Court, U.S. District Court, Southern District of  
3 California, 333 West Broadway, Suite 420, San Diego, California 92101.

4 (b) With each payment to the Clerk of the Court made  
5 pursuant to the court's restitution order, defendant will provide the  
6 following information:

7 (1) Defendant's name and Social Security number;

8 (2) The District Court docket number assigned to this  
9 case;

10 (3) Tax year(s) or period(s) for which restitution has  
11 been ordered; and

12 (4) A statement that the payment is being submitted  
13 pursuant to the court's restitution order.

14 Defendant agrees to include a request that the Clerk of the Court  
15 send the information, along with defendant's payments, to the  
16 appropriate office of the Internal Revenue Service.

17 Defendant also agrees to send a notice of any payments made  
18 pursuant to this agreement, including the information listed in the  
19 previous paragraph, to the IRS at the following address:

20 IRS-RACS

21 Attn: Mail Stop 6261, Restitution

22 333 W. Pershing Ave.

23 Kansas City, MO 64108

24 I. SUPERVISED RELEASE

25 If the Court imposes a term of supervised release, Defendant  
26 agrees that he will not later seek to reduce or terminate early the  
27 term of supervised release until he has served at least 2/3 of his  
28 term of supervised release and has fully paid and satisfied any

1 special assessments, fine, criminal forfeiture judgment and  
2 restitution judgment.

3 **XI**

4 **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

5 In exchange for the Government's concessions in this plea  
6 agreement, Defendant waives, to the full extent of the law, any right  
7 to appeal or to collaterally attack the conviction and any lawful  
8 restitution order, except a post-conviction collateral attack based on  
9 a claim of ineffective assistance of counsel. Defendant also waives,  
10 to the full extent of the law, any right to appeal or to collaterally  
11 attack his sentence, except a post-conviction collateral attack based  
12 on a claim of ineffective assistance of counsel, unless the Court  
13 imposes a custodial sentence above the high end of the guideline range  
14 recommended by the Government pursuant to this agreement at the time  
15 of sentencing. If the custodial sentence is greater than the high end  
16 of that range, Defendant may appeal the sentence only, but the  
17 Government will be free to support on appeal the sentence actually  
18 imposed. If Defendant believes the Government's recommendation is not  
19 in accord with this plea agreement, Defendant will object at the time  
20 of sentencing; otherwise the objection will be deemed waived.

21 If at any time Defendant files a notice of appeal, appeals or  
22 collaterally attacks the conviction or sentence in violation of this  
23 plea agreement, said violation shall be a material breach of this  
24 agreement as further defined below.

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1 XII

2 BREACH OF THE PLEA AGREEMENT

3 A. MATERIAL BREACH OF PLEA AGREEMENT

4 Defendant acknowledges, understands, and agrees that if Defendant  
5 violates or fails to perform any of Defendant's obligations under this  
6 agreement, such violation or failure to perform will constitute a  
7 material breach of this agreement.

8 Defendant acknowledges, understands, and agrees further that the  
9 following non-exhaustive list of conduct by Defendant unquestionably  
10 constitutes a material breach of this plea agreement:

- 11 1. Failing to plead guilty pursuant to this agreement;
- 12 2. Withdrawing the guilty plea or attempting to withdraw  
13 the guilty plea;
- 14 3. Failing to fully accept responsibility as established  
15 in Section X, paragraph B, above;
- 16 4. Failing to appear in court;
- 17 5. Failing to abide by any lawful court order related to  
18 this case;
- 19 6. Appealing or collaterally attacking the sentence or  
20 conviction in violation of Section XI of this plea  
21 agreement; or
- 22 7. Engaging in additional criminal conduct from the time  
23 of arrest until the time of sentencing.

24 B. CONSEQUENCES OF BREACH

25 In the event of Defendant's material breach of this plea  
26 agreement, Defendant will not be able to enforce any of its  
27 provisions, and the United States will be relieved of all its  
28 obligations under this plea agreement. For example, the United States

1 may pursue any charges including those that were dismissed, promised  
2 to be dismissed, or not filed as a result of this agreement (Defendant  
3 agrees that any statute of limitations relating to such charges is  
4 tolled as of the date of this agreement; Defendant also waives any  
5 double jeopardy defense to such charges). In addition, the  
6 United States may move to set aside Defendant's guilty plea.  
7 Defendant may not withdraw the guilty plea based on the United States'  
8 pursuit of remedies for Defendant's breach.

9 **XIII**

10 **COMPLETE WAIVER OF PLEA-DISCUSSION EXCLUSION RIGHTS**

11 In exchange for the United States' concessions in this agreement,  
12 Defendant agrees that: (i) the stipulated factual basis statement in  
13 this agreement; (ii) any statements made by Defendant, under oath, at  
14 the guilty plea hearing (before either a Magistrate Judge or a  
15 District Judge); and (iii) any evidence derived from such statements,  
16 are admissible against Defendant in the prosecution's case-in-chief  
17 and at any other stage of the proceedings in any prosecution of or  
18 action against Defendant on the current charges and/or any other  
19 charges that the United States may pursue against Defendant.  
20 Additionally, Defendant knowingly, voluntarily, and intelligently  
21 waives any argument under the United States Constitution, any statute,  
22 Federal Rule of Evidence 410, Federal Rule of Criminal Procedure  
23 11(f), and/or any other federal rule, that these statements or any  
24 evidence derived from these statements should be suppressed or are  
25 inadmissible. Defendant's waiver of the aforementioned rights is  
26 effective as soon as the parties sign this agreement, and is not  
27 contingent upon the Court ultimately accepting Defendant's guilty  
28 plea.

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XIV

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XVI

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, Defendant certifies that Defendant has read it (or that it has been read to Defendant in Defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

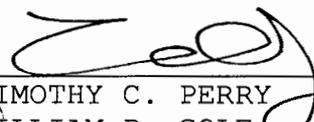
XVIII

DEFENDANT SATISFIED WITH COUNSEL

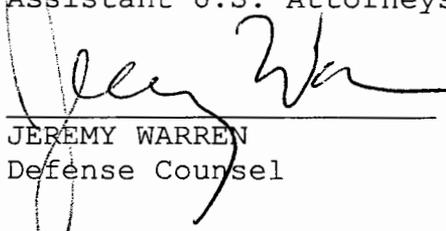
Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and his counsel did not advise him about what to say in this regard.

CINDY M. CIPRIANI  
Acting United States Attorney

3/14/14  
\_\_\_\_\_  
DATED

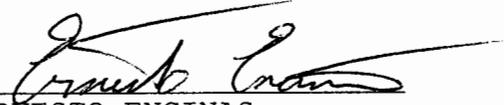
  
\_\_\_\_\_  
TIMOTHY C. PERRY  
WILLIAM P. COLE  
Assistant U.S. Attorneys

3/14/14  
\_\_\_\_\_  
DATED

  
\_\_\_\_\_  
JEREMY WARREN  
Defense Counsel

1 IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR  
2 UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION  
3 ABOVE ARE TRUE.

4 3/14/2014  
DATED

  
ERNESTO ENCINAS  
Defendant

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