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7
 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	CASE NO.: 1:10-cr-00249 AWI
11)	
12 Plaintiff,)	MEMORANDUM OF PLEA AGREEMENT
13)	PURSUANT TO RULE 11(c) OF THE
14)	FEDERAL RULES OF CRIMINAL
15)	PROCEDURE
16)	
17 v.)	
18)	
19)	
20 ERIC RAY HERNANDEZ,)	
21)	
22 Defendant.)	

23 Pursuant to Rule 11(c) of the Federal Rules of Criminal
 24 Procedure, the United States of America, by and through Benjamin B.
 25 Wagner, the United States Attorney for the Eastern District of
 26 California, and Assistant United States Attorneys Kirk E. Sherriff
 27 and Henry Z. Carbajal III; and defendant ERIC RAY HERNANDEZ and his
 28 attorney, David Torres, have agreed as follows:

1. Scope of Agreement

This document contains the complete Memorandum of Plea Agreement
 ("Plea Agreement") between the United States Attorney's Office for
 the Eastern District of California ("Government") and defendant

1 ERIC RAY HERNANDEZ regarding this case. This Plea Agreement is
2 limited to the United States Attorney's Office for the Eastern
3 District of California and cannot bind any other federal, state, or
4 local prosecuting, administrative, or regulatory authorities.

5 2. Charges

6 Defendant ERIC RAY HERNANDEZ acknowledges that he has been
7 charged in the Superseding Indictment with twenty-two counts, as
8 follows:

9 COUNT ONE: Conspiracy to Commit Mail Fraud, Wire
10 Fraud, and Bank Fraud, in violation of
11 Title 18, United States Code,
12 Section 1349;

13 COUNTS TWO
14 through NINETEEN: Mail Fraud, in violation of Title 18, United
15 States Code, Section 1341; and

16 COUNTS TWENTY,
17 TWENTY-TWO, and
18 TWENTY-THREE: Money Laundering & Aiding and Abetting, in
19 violation of Title 18, United States Code,
20 Sections 1957 and 2.

21 3. Nature, Elements and Possible Defenses

22 The defendant has read the charges against him contained in the
23 Superseding Indictment, and those charges have been fully explained
24 to him by his attorney. Further, the defendant fully understands the
25 nature and elements of the crimes in the Superseding Indictment to
26 which he is pleading guilty, together with the possible defenses
27 thereto, and has discussed them with his attorney.

28 ///

///

1 The elements of the crime of Conspiracy to Commit Mail Fraud,
2 Wire Fraud, and Bank Fraud, in violation of 18 U.S.C. § 1349, are:

3 First, there was an agreement between two or more persons to
4 commit mail fraud, wire fraud, and bank fraud; and

5 Second, the defendant became a member of the conspiracy
6 knowing of at least one of its objects and intending
7 to help accomplish it.

8 The elements of the crime of Mail Fraud, in violation of 18
9 U.S.C. § 1341, are:

10 First, the defendant knowingly participated in a scheme or
11 plan to defraud, or a scheme or plan for obtaining
12 money or property by false or fraudulent pretenses,
13 representations, or promises;

14 Second, the statements made or facts omitted as part of the
15 scheme were material; that is, they had a natural
16 tendency to influence, or were capable of influencing,
17 a person to part with money or property;

18 Third, the defendant acted with the intent to defraud; that
19 is, the intent to deceive or cheat; and

20 Fourth, the defendant used, or caused to be used, the mails or
21 any private or commercial interstate carrier to carry
22 out or attempt to carry out an essential part of the
23 scheme.

24 The elements of the crime of Wire Fraud, in violation of 18
25 U.S.C. § 1343, are:

26 First, the defendant knowingly participated in a scheme or
27 plan to defraud, or a scheme or plan for obtaining
28 money or property by false or fraudulent pretenses,
representations, or promises;

Second, the statements made or facts omitted as part of the
scheme were material; that is, they had a natural
tendency to influence, or were capable of influencing,
a person to part with money or property;

Third, the defendant acted with the intent to defraud; that
is, the intent to deceive or cheat; and

Fourth, the defendant transmitted, or caused to be
transmitted, by wire, radio or television
communication, in interstate or foreign commerce,
certain signs, signals or sounds;

1 Fifth, such transmission was in furtherance of the scheme to
2 defraud or plan for obtaining money; and

3 The elements of the crime of Bank Fraud, in violation of 18
4 U.S.C. § 1344, are:

5 First, the defendant knowingly carried out a scheme or plan
6 to obtain money or property from a financial
institution by making false statements or promises;

7 Second, the defendant knew that the statements or promises
8 were false;

9 Third, the statements or promises were material; that is,
10 they had a natural tendency to influence, or were
capable of influencing, a financial institution to
part with money or property;

11 Fourth, the defendant acted with the intent to defraud; and

12 Fifth, the financial institution was federally chartered or
13 insured.

14 4. Agreements by the Defendant

15 (a) The defendant agrees that this Plea Agreement shall be
16 filed with the court and become a part of the record of the case.

17 (b) The defendant agrees to enter a plea of guilty to Count One
18 of the Indictment, which charges the defendant with Conspiracy to
19 Commit Mail Fraud, Wire Fraud, and Bank Fraud, in violation of 18
20 U.S.C. § 1349.

21 (c) The defendant understands and agrees that he will not be
22 allowed to withdraw his plea should the Court fail to follow the
23 Government's sentencing recommendations.

24 (d) The Defendant further acknowledges that his plea of guilty
25 is voluntary and that no force, threats, promises or representations
26 have been made to anybody, nor agreement reached, other than those
27 set forth expressly in this Plea Agreement, to induce the defendant
28 to plead guilty.

1 (e) The defendant knowingly and voluntarily waives his
2 Constitutional and statutory rights to appeal his plea, conviction
3 and sentence. This waiver of appeal includes, but is not limited to,
4 an express waiver of the defendant's right to appeal his plea,
5 conviction, restitution imposed, forfeiture order and sentence on any
6 ground, including any appeal right conferred by 18 U.S.C. § 3742, and
7 the defendant further agrees not to contest his plea, conviction,
8 restitution imposed, forfeiture order and sentence in any post-
9 conviction proceeding, including but not limited to a proceeding
10 under 28 U.S.C. § 2255.

11 (f) The defendant agrees that his base offense level for
12 Conspiracy to Commit Mail Fraud, Wire Fraud, and Bank Fraud is seven
13 (7) pursuant to Section 2B1.1(a)(1) of the 2012 United States
14 Sentencing Commission Guidelines Manual ("Sentencing Guidelines"),
15 plus eighteen (18) levels for loss more than \$2.5 million but less
16 than \$7,000,000 (§ 2B1.1(b)(1)(J)), plus two (2) levels as the
17 offense involved the use of sophisticated means (§ 2B1.1(b)(10)(C)),
18 and plus four (4) levels as the defendant was an organizer and leader
19 of the criminal conspiracy, which involved five or more participants
20 and was otherwise extensive (§ 3B1.1(a)).

21 (g) The defendant agrees not to move for any downward
22 adjustments in his offense level under Chapters Two, Three, Four
23 and/or Five of the United States Sentencing Guidelines, including
24 without limitation, any downward departure and/or variance of his
25 offense level, criminal history category or criminal history points
26 as defined by the Sentencing Guidelines. The defendant also agrees
27 not to move for a downward variance of his sentence under the factors
28 set forth in 18 U.S.C. § 3553. Provided, however: The defendant

1 also retains the right to argue under the Sentencing Guidelines
2 and/or under the factors at 18 U.S.C. § 3553(a) for a sentence of not
3 less than 87 months imprisonment. The defendant acknowledges that,
4 if the defendant requests or suggests in any manner a sentence other
5 than as set forth above, the Government, at its sole discretion, may
6 withdraw from this plea agreement and continue with its prosecution
7 of the defendant as if the parties had not entered into this Plea
8 Agreement.

9 (h) The defendant agrees that his conduct is governed by the
10 Mandatory Restitution Act pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii),
11 and agrees to pay the full amount of restitution as ordered by the
12 court to all victims affected by this offense, including but not
13 limited to the victims covered in the factual basis, victims covered
14 in those counts to be dismissed as part of the plea agreement
15 pursuant to 18 U.S.C. § 3663A(a)(3), and other victims as a result of
16 the defendant's conduct for the offenses charged from the periods of
17 October 2005 through May 2007, in an amount determined by the court
18 at sentencing.

19 (i) The defendant agrees to make a full and complete disclosure
20 of the defendant's assets and financial condition, and will complete
21 the United States Attorney's Office's "Authorization to Release
22 Information" and "Financial Affidavit" within five (5) weeks from the
23 entry of the defendant's change of plea. The defendant also agrees
24 to have the court enter an order to that effect. The defendant
25 understands that this plea agreement is voidable by the government if
26 he fails to complete and provide the described documentation to the
27 United States Attorney's office within the allotted time.

28

1 (j) The defendant agrees to forfeit to the United States
2 voluntarily and immediately all right, title, and interest to any and
3 all assets subject to forfeiture pursuant to 18 U.S.C.
4 §§ 981(a)(1)(A), 981(a)(1)(C), 981(a)(1)(D), 982(a)(1), 982(a)(2); 28
5 U.S.C. § 2461, and Fed. R. Crim. P. 32.2(b)(1). The defendant agrees
6 that this includes a personal forfeiture money judgment in the amount
7 of \$6,037,541. Further, the defendant agrees that this amount is a
8 reasonable reflection of the amount that he obtained directly or
9 indirectly as the result of the underlying criminal scheme and
10 conspiracy, and the violations as alleged in the Superseding
11 Indictment of Conspiracy to Commit Mail Fraud, Wire Fraud, and Bank
12 Fraud, in violation of 18 U.S.C. § 1349; Mail Fraud, in violation of
13 18 U.S.C. 1341; and Money Laundering, in violation of 18 U.S.C.
14 § 1957. As part of the imposition of the personal forfeiture money
15 judgment, the defendant agrees to provide this Office with signed
16 waivers related to federal and state income tax returns, and a waiver
17 of the Right to Financial Privacy Act, which includes, but is not
18 limited to, any credit records, communication records, DMV records,
19 educational records, employment records, military records, business
20 records, and credit reports maintained by any consumer credit
21 reporting entity, until such time as the money judgment is satisfied.
22 In this regard, the defendant agrees to complete and sign a copy of
23 IRS Form 8821 (relating to the voluntary disclosure of federal tax
24 return information), whatever financial information disclosure form
25 which may be required by an agency, as well as this Office's Right to
26 Financial Privacy Act Waiver & Authorization to Release Information
27 form.

28

1 The defendant agrees to fully assist the government in the
2 forfeiture of any seized assets or assets later determined to be
3 forfeitable and to take whatever steps are necessary to pass clear
4 title to the United States. The defendant shall not sell, transfer,
5 convey, or otherwise dispose of any assets found to be connected to
6 the criminal events charged in the Indictment.

7 The defendant agrees not to file a claim to any of the seized
8 property in any criminal proceeding or civil proceeding,
9 administrative or judicial, which is or may be initiated. The
10 defendant agrees to waive right to notice of any forfeiture
11 proceeding involving such property, and agrees to not file a claim or
12 assist others in filing a claim in such a proceeding.

13 The defendant waives the notice provisions of Fed. R. Crim. P.
14 7(c) and 32.2(a), waives oral pronouncement of forfeiture at the time
15 of sentencing and any defects in such pronouncement that pertain to
16 forfeiture, and waives any defenses to forfeiture, including any
17 defense predicated on the Ex Post Facto, Double Jeopardy, and
18 Excessive Fines Clauses of the United States Constitution. The
19 defendant knowingly and voluntarily waives any right to jury trial in
20 any criminal or civil forfeiture proceeding.

21 (k) If the defendant's conviction on the count to which he is
22 pleading is ever vacated at the defendant's request, or his sentence
23 is ever reduced at his request, the government shall have the right
24 to: (1) prosecute the defendant on any of the counts to which he
25 pleaded guilty; (2) reinstate any counts that may be dismissed under
26 this agreement; and (3) file any new charges that would otherwise be
27 barred by this agreement. The decision to pursue any or all of these
28 options is solely in the discretion of the United States Attorney's

1 Office. By signing this agreement, the defendant agrees to waive any
2 objections, motions, and defenses he might have to the government's
3 decision, including Double Jeopardy. In particular, he agrees not to
4 raise any objections based on the passage of time with respect to
5 such counts including, without limitation, any statutes of limitation
6 or any objections based on the Speedy Trial Act or the Speedy Trial
7 Clause of the Sixth Amendment.

8 If it is determined that the defendant has violated any
9 provision of this Agreement or if the defendant successfully moves to
10 withdraw his plea: (1) all statements made by the defendant to the
11 government or other designated law enforcement agents, or any
12 testimony given by the defendant before a grand jury or other
13 tribunal, whether before or after his Agreement, shall be admissible
14 in evidence in any criminal, civil, or administrative proceedings
15 hereafter brought against the defendant; and (2) the defendant shall
16 assert no claim under the United States Constitution, any statute, the
17 Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
18 Evidence, or any other federal rule, that statements made by the
19 defendant before or after this Agreement, or any leads derived
20 therefrom, should be suppressed. By signing this Agreement, the
21 defendant waives any and all rights in the foregoing respects.

22 (1) The defendant understands that the Court must consult the
23 Federal Sentencing Guidelines (as promulgated by the Sentencing
24 Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C.
25 §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United
26 States v. Booker and United States v. Fanfan, 543 U.S. 220, 125
27 S. Ct. 738 (2005)), and must take them into account when determining
28 a final sentence. The defendant understands that the Court will

1 determine a non-binding and advisory guideline sentencing range for
2 this case pursuant to the Sentencing Guidelines. The defendant
3 further understands that the Court will consider whether there is a
4 basis for departure from the guideline sentencing range (either above
5 or below the guideline sentencing range) because there exists an
6 aggravating or mitigating circumstance of a kind, or to a degree, not
7 adequately taken into consideration by the Sentencing Commission in
8 formulating the Guidelines. The defendant further understands that
9 the Court, after consultation and consideration of the Sentencing
10 Guidelines, must impose a sentence that is reasonable in light of the
11 factors set forth in 18 U.S.C. § 3553(a).

12 (m) Defendant acknowledges and understands that the plea offer
13 made to him here by the United States is a "package offer," that is:

- 14 i. The defendant understands that the offer made to him
15 is conditional on co-defendant Monica Marie Hernandez
16 pleading guilty according to the terms of her
17 respective plea offer. The defendant understands that
18 if his co-defendant declines, refuses, or fails to
19 plead guilty according to her respective offer, then,
20 at the option of the United States, the defendant will
21 not be allowed to enter a plea of guilty to the offer
22 made to him by the United States. Moreover, if co-
23 defendant Monica Marie Hernandez fails or refuses to
24 enter her plea according to the terms of her
25 respective plea offer, and the defendant has already
26 entered his plea, then the United States, in its sole
27 discretion, has the ability to withdraw from the Plea
28 Agreement with the defendant and pursue the original

1 charges as to this defendant; and

2 ii. Recognizing that this is a package offer, the
3 defendant also confirms that he has not been
4 threatened or coerced by any other person, including
5 the co-defendant, and that the defendant enters into
6 this Plea Agreement of his own volition.

7 (n) The defendant agrees to waive all rights under the "Hyde
8 Amendment," Pub. L. No. 105-109, § 617, 111 Stat. 2519 (1997), to
9 recover attorneys' fees or other litigation expenses in connection
10 with the investigation and prosecution of all charges in the above-
11 captioned matter and of any related allegations (including without
12 limitation any charges to be dismissed pursuant to this Plea
13 Agreement and any charges previously dismissed).

14 5. Agreements by the Government

15 (a) The Government will recommend a two-level reduction (if the
16 offense level is less than 16) or a three-level reduction (if the
17 offense level reaches 16) in the computation of the defendant's
18 offense level if the defendant clearly demonstrates acceptance of
19 responsibility for his conduct as defined in Section 3E1.1 of the
20 Sentencing Guidelines.

21 (b) The Government agrees that the defendant's base offense
22 level for Conspiracy to Commit Mail Fraud, Wire Fraud, and Bank Fraud
23 is seven (7) pursuant to Section 2B1.1(a)(1) of the Sentencing
24 Guidelines, plus eighteen (18) levels for loss more than \$2.5 million
25 but less than \$7 million (§ 2B1.1(b)(1)(J)), plus two (2) levels as
26 the offense involved the use of sophisticated means
27 (§ 2B1.1(b)(10)(C)), and plus four (4) levels as the defendant was an
28 organizer and leader of the criminal conspiracy, which involved five

1 or more participants and was otherwise extensive (§ 3B1.1(a)).

2 (c) The United States agrees that if the defendant's guideline
3 range, after any adjustments, falls within Zone B, C, or D of the
4 Sentencing Table, the Government will recommend that the defendant be
5 sentenced to imprisonment within the applicable guideline range as
6 determined by the Court.

7 (d) The government agrees to dismiss the remaining counts of
8 the Superseding Indictment as to this defendant at the time of
9 sentencing, consisting of Counts Two through Twenty, Twenty-Two, and
10 Twenty-Three.

11 (e) The defendant acknowledges and understands that the
12 government makes no other representations to him regarding
13 sentencing, including regarding fines, the restitution owed, whether
14 any other specific offense characteristics apply to his conduct under
15 Chapter Two of the Sentencing Guidelines, whether additional
16 enhancements or reductions apply under Chapter Three or Five of the
17 Sentencing Guidelines, or his criminal history or criminal history
18 points under Chapter Four of the Sentencing Guidelines, and the
19 defendant understands that the government is free to comment and to
20 make recommendations to the court and the probation office regarding
21 those matters.

22 6. Factual Basis

23 The defendant will plead guilty because he is in fact guilty of
24 the crime set forth at Count One in the Superseding Indictment. The
25 defendant also agrees that the following are the facts of this case,
26 although he acknowledges that, as to other facts, the parties may
27 disagree:

28 Beginning in and about October 2005, and continuing
thereafter to in and about May 2007, in the State and

1 Eastern District of California, defendant ERIC RAY
2 HERNANDEZ and co-defendants Monica Marie Hernandez, Evelyn
3 Brigget Sanchez, Patricia Ann King, and Darling Arlette
4 Montalvo conspired to defraud mortgage lenders and
5 federally chartered or insured lending/financial
6 institutions (collectively referred to herein as "Lenders")
7 of money and property, and caused money and property to be
8 obtained from such Lenders, including but not limited to
9 SunTrust Mortgage, Inc., Long Beach Mortgage Co., WMC
10 Mortgage Corp., and Washington Mutual Bank ("Washington
11 Mutual"), by means of materially false and fraudulent
12 pretenses, representations, and promises. Washington
13 Mutual was at all relevant times an insured depository
14 institution, as defined at Title 18, United States Code,
15 Section 20.

16 Defendant ERIC HERNANDEZ and co-defendants Monica
17 Hernandez, Evelyn Sanchez, Patricia King, and Darling
18 Montalvo conspired to carry out the scheme by the following
19 manner and means:

20 Defendant ERIC HERNANDEZ and co-defendants Monica
21 Hernandez, and Evelyn Sanchez, Patricia King, and Darling
22 Montalvo knowingly conspired to cause materially false and
23 fraudulent statements to be made in loan applications and
24 related transaction documents that they submitted to
25 Lenders on behalf of borrowers, thereby causing the Lenders
26 to fund mortgage loans on the basis of materially false and
27 misleading information. The defendants caused false loan
28 applications and fraudulent supporting documentation to be
submitted to Lenders to obtain loans for the purchase
and/or refinancing of real properties for the benefit of
the defendants.

For example, among other fraudulent property loan
transactions, co-defendants Evelyn Sanchez and Darling
Montalvo conspired with defendant ERIC HERNANDEZ and others
to obtain loans in the name of co-defendants Evelyn Sanchez
and Darling Montalvo, and others, based on false loan
applications and fraudulent supporting documentation,
including loans for the purchase and/or refinance of real
properties located at 4401 Vern St., 3715 Kathy Suzanne
Way, 5107 Fountain Grass Ave., 643 Sunset Meadow Ln., 12800
Reina Rd., 8111 Fighting Irish Dr., and 1501 Galina Ct. in
Bakersfield, California, and 344 Sandpiper Ln., Oceano,
California. In furtherance of the scheme to defraud, the
defendants also obtained loans in the names of other
buyers, based on false and fraudulent applications and
documentation, on other properties including: 11310
Vauxhall Bridge Dr., 5208 Wailea Dr., 11917 Indianapolis
Dr., 1478 Newport Ave., 3710 Kathy Suzanne Way, 3706 Kathy
Suzanne Way, 4303 Walker Lake Dr., 12502 Reina Rd., 4500
Summer Side Ave., 11515 Privet Place, 3803 Mt. Celeste Ct.,
14441 Kathleen Ave., 3807 Mt. Celeste Ct., 11418 Valley
Forge Way, 2409 Trentino Ave., 8411 Rolling Bay Dr., 1808
Stillman Ave., 9413 Meadow Leaf Ct., 2201 Butterfield Ave.,

1 and 400 Taft Highway, in Bakersfield, California.

2 Defendant ERIC HERNANDEZ was employed as a loan officer at
3 Network Source Funding from approximately October 2005
4 through August 2006, and as a loan officer at New Millenium
5 Lending from approximately August 2006 through May 2007.
6 Co-defendant Evelyn Sanchez was employed as a loan
7 processor at these entities during these same time periods.
8 Co-defendant Darling Montalvo is the sister of co-defendant
9 Evelyn Sanchez, and conspired with the other defendants to
10 submit fraudulent loan applications to Lenders in this time
11 period. Co-defendant Monica Hernandez is the spouse of
12 defendant ERIC RAY HERNANDEZ, and worked with the other
13 defendants to prepare and submit fraudulent loan
14 applications to Lenders in this time period. These co-
15 conspirators also knowingly obtained false documentation
16 and fraudulent verifications from co-defendant Patricia
17 King, a tax preparer, in support of false loan applications
18 and in furtherance of the scheme to defraud.

19 The false and fraudulent statements that the defendants
20 caused to be submitted to Lenders in the loan applications
21 frequently included material misstatements concerning the
22 borrower's income, assets, and employment, and false
23 statements concerning the borrower's intent to reside in
24 the properties as an owner-occupier, among other material
25 misstatements and/or omissions. The defendants also
26 fabricated false supporting documentation and caused such
27 false supporting documentation to be submitted to Lenders
28 in support of loan applications. The Lenders then
distributed the mortgage loan funds to escrow companies or
other companies, frequently by electronic wire
transmission. In furtherance of the scheme to defraud, on
the loan transactions the defendants caused mailings to be
sent and delivered by the U.S. Postal Service and/or
interstate commercial courier, and also caused interstate
wires of funds and records to be made. The mailings in
furtherance of the scheme to defraud typically included on
each transaction, among other items, the county Recorder's
Office's mailing through the U.S. Postal Service of the
recorded Deeds of Trust, which notified the Lenders of the
conveyance of the properties and the recording of the
transactions.

At all relevant times herein, in carrying out these
actions, defendant ERIC HERNANDEZ and co-defendants Monica
Hernandez, Evelyn Sanchez, Patricia King, and Darling
Montalvo acted with the intent to defraud. The defendants
knowingly caused misstatements and/or omissions to be made
in connection with the loan applications, and knew that the
mortgage loans funded on the basis of such applications
were obtained through materially false and fraudulent
statements. In total, defendant ERIC HERNANDEZ and the co-
defendants caused the defrauded Lenders to incur losses of
approximately \$6,037,541.

1 7. Potential Sentence

2 The following is the maximum potential sentence which the
3 defendant faces on Count 1:

4 (a) Imprisonment.

5 Maximum: Thirty (30) years.

6 (b) Fine.

7 Maximum: One Million Dollars (\$1,000,000.00).

8 (c) Both such fine and imprisonment.

9 (d) Restitution- Mandatory

10 (e) Term of Supervised Release:

11 Maximum: Five (5) years.

12 (Should the defendant violate any of the terms of his
13 supervised release, he can be returned to prison for
14 the period of supervised release actually imposed by
the Court or three (3) years, whichever is less.)

15 (f) Penalty Assessment.

16 Mandatory: One Hundred Dollars (\$100.00).

17 8. Waiver of Rights

18 The defendant understands that by pleading guilty he surrenders
19 certain rights, including the following:

20 (a) The defendant is giving up his right to plead not guilty
21 and to persist in that plea. If the defendant persisted in a plea of
22 not guilty to the charges against him, he would have the right to be
23 represented by an attorney at all stages of the proceedings, and
24 would have a right to a public and speedy trial. The trial could be
25 either a jury trial or a trial by a judge sitting without a jury.
26 The defendant has a right to a jury trial. However, in order that
27 the trial be conducted by the judge sitting without a jury, the
28 defendant, the Government and the judge all must agree that the trial

1 be conducted by the judge without a jury.

2 (b) If the trial were a jury trial, the jury would be composed
3 of twelve lay persons selected at random. The defendant and his
4 attorney would have a say in who the jurors would be, by removing
5 prospective jurors for cause where actual bias or other
6 disqualification is shown, or without cause by exercising peremptory
7 challenges. The jury would have to agree unanimously before it could
8 return a verdict of either guilty or not guilty. The jury would be
9 instructed that the defendant is presumed innocent and that it could
10 not convict him unless, after hearing all the evidence, it was
11 persuaded of his guilt beyond a reasonable doubt.

12 (c) If the trial were held before a judge without a jury, the
13 judge would find the facts and determine, after hearing all the
14 evidence, whether or not he was persuaded of the defendant's guilt
15 beyond a reasonable doubt.

16 (d) At a trial, whether by a jury or a judge, the Government
17 would be required to present its witnesses and other evidence against
18 the defendant. The defendant would be able to confront those
19 Government witnesses and his attorney would be able to cross-examine
20 them. In turn, the defendant could present witnesses and other
21 evidence on his own behalf. If the witnesses for the defendant would
22 not appear voluntarily, he could require their attendance through the
23 subpoena power of the Court. At trial, the defendant would also have
24 the right to assistance of legal counsel. If he could not afford
25 legal counsel, one would be appointed for him by the court at no
26 expense to him.

27 (e) At a trial, the defendant would have a privilege against
28 self-incrimination so that he could decline to testify,

1 and no inference of guilt could be drawn from this refusal to
2 testify.

3 (f) If the defendant ever attempts to vacate his plea, dismiss
4 the underlying charges, or reduce or set aside his sentence on any
5 count(s) to which he is pleading guilty, the Government shall have
6 the right (1) to prosecute defendant on any and all count(s) to which
7 he pleaded guilty, and (2) to file any new charges that would
8 otherwise be barred by this Plea Agreement. The decision to pursue
9 any or all of these options is solely in the discretion of the
10 Government. By signing this Plea Agreement, the defendant agrees to
11 waive any objections, motions, and defenses he might have to the
12 Government's decision. Defendant specifically agrees not to raise
13 any objections based on the passage of time with respect to such
14 counts including, but not limited to, any statutes of limitation or
15 any objections based on the Speedy Trial Act or the Speedy Trial
16 Clause of the Sixth Amendment.

17 The defendant understands that by pleading guilty he is waiving
18 all of the rights set forth above, and acknowledges that his attorney
19 has explained to him those rights and the consequences of his waiver
20 of those rights.

21 9. Right to Counsel

22 The defendant understands that he has a right to counsel
23 throughout his case from his initial appearance through his trial or
24 guilty plea, or any dismissal of the case against him, and through
25 and including any sentencing. If not for the waiver of appeal rights
26 in this Plea Agreement, the defendant would also have a right to
27 counsel on a direct appeal in his case. The defendant understands
28 that the right to counsel includes the provision of defense counsel

1 through the Court if the defendant cannot afford to hire counsel.

2 10. Questions by Court

3 The defendant understands that if the court questions him under
4 oath, on the record and in the presence of counsel, about the offense
5 to which he has pleaded guilty, his answers, if false, may later be
6 used against him in a prosecution for perjury.

7 11. Entire Plea Agreement

8 (a) Other than this Plea Agreement, no agreement,
9 understanding, promise, or condition exists between the United States
10 and defendant. Nor will any such agreement, understanding, promise,
11 or condition exist unless it is committed to writing and signed by
12 the defendant, counsel for the defendant, and counsel for the
13 Government.

14 (b) This plea of guilty is freely and voluntarily made and is
15 not the result of force or threats, or of any promises apart from
16 those specifically set forth in this Plea Agreement. There have been
17 no representations or promises from anyone as to what sentence the
18 Court will impose.

19 12. Court not a Party

20 (a) It is understood by the parties that the Sentencing Court
21 is neither a party to nor bound by this agreement. Sentencing is a
22 matter solely within the discretion of the Court. The Court is under
23 no obligation to accept any recommendations made by the Government,
24 and the Court may in its discretion impose any sentence it deems
25 appropriate up to and including the statutory maximum set forth in
26 Section 7 above.


27 (b) In making its sentencing decision, the Court may take into
28 consideration any and all facts and circumstances concerning the

1 defendant's criminal activities, including activities which may not
2 have been charged in the Indictment. If the Court should impose any
3 sentence up to the statutory maximum, the defendant understands that
4 he cannot for that reason withdraw his guilty plea, and he will
5 remain bound to fulfill all of the obligations under this Plea
6 Agreement. The defendant understands that neither the prosecutor,
7 defense counsel, nor the Court can make or have made any promise
8 regarding the sentence the defendant will receive.

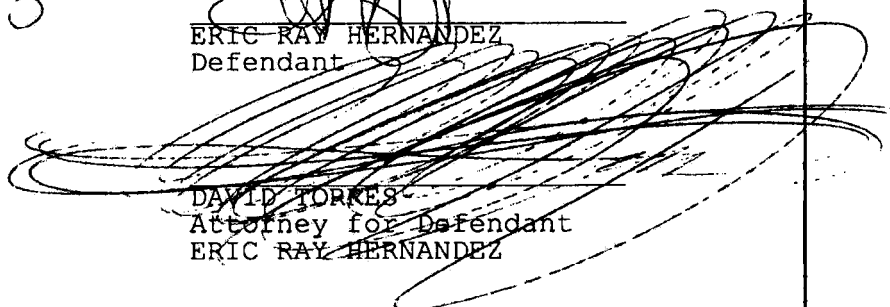
9 13. Presentence Report

10 The defendant understands that the United States Probation
11 Office is not a party to this agreement and will conduct an
12 independent investigation of the defendant's activities and his
13 background. It will then prepare a presentence report which it will
14 submit to the Court as its independent sentencing recommendation. In
15 addition, the Government will fully apprise the Probation Office, as
16 well as the Court, of the full and true nature, scope and extent of
17 the defendant's criminal activities, including information on his
18 background and criminal history.

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20 Dated: 5/27/2013


ERIC RAY HERNANDEZ
Defendant

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23 Dated: 27 MAY 2013

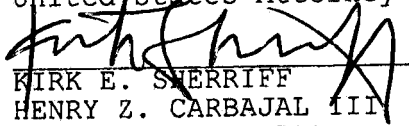

DAVID TORRES
Attorney for Defendant
ERIC RAY HERNANDEZ

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Dated: 5/28/2013

BENJAMIN B. WAGNER
United States Attorney

By: 
~~KIRK E. SVERRIFF~~
HENRY Z. CARBAJAL III
Assistant U.S. Attorneys