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

11	UNITED STATES OF AMERICA,)	CASE NO.: 1:09-cr-00375 OWW
12)	
13	Plaintiff,)	MEMORANDUM OF PLEA AGREEMENT
14)	PURSUANT TO RULE 11(c) OF THE
15	v.)	FEDERAL RULES OF CRIMINAL
16)	PROCEDURE
17)	
18)	
19	JERALD ALLEN TEIXEIRA,)	Date: Sept. 28, 2009
20)	Time: 1:30 p.m.
21	Defendant.)	Court: Three
22)	(Hon. Oliver W. Wanger)

18
19 Pursuant to Rule 11(c) of the Federal Rules of Criminal
20 Procedure, the United States of America, by and through Lawrence G.
21 Brown, the United States Attorney for the Eastern District of
22 California, and Assistant United States Attorneys Stanley A. Boone,
23 Sheila K. Oberto, and Kirk E. Sherriff; and Defendant, JERALD ALLEN
24 TEIXEIRA, and his attorney, David Torres, have agreed as follows:

25 1. Scope of Agreement

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

1 JERALD ALLEN TEIXEIRA 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 The defendant acknowledges that he will be charged in an
7 Information as follows: Wire Fraud and Aiding and Abetting, in
8 violation of Title 18, United States Code, Sections 1343 and 2.

9 3. Nature, Elements and Possible Defenses

10 The defendant has read the charges against him contained in the
11 Information, and those charges have been fully explained to him by
12 his attorney. Further, the defendant fully understands the nature
13 and elements of the crime in the Information to which he is pleading
14 guilty, together with the possible defenses thereto, and has
15 discussed them with his attorney.

16 The elements of the crime of Wire Fraud are:

17 First, the defendant participated in a scheme to defraud or
18 plan for obtaining money or property by false or
fraudulent pretenses, representations, or promises;

19 Second, the false or fraudulent pretenses, representations, or
20 promises were material, that is they would reasonably
influence a person to part with money or property;

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

24 Fourth, such transmission was in furtherance of the scheme to
defraud or plan for obtaining money; and

25 Fifth, the defendant acted with the intent to defraud.

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1 4. Agreements by the Defendant

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

4 (b) The defendant agrees to enter a plea of guilty to the
5 Information which charges him with Wire Fraud and Aiding and
6 Abetting, in violation of Title 18, United States Code, Sections 1343
7 and 2.

8 (c) The defendant agrees that, at or before the entry of plea
9 proceeding, he will sign a written waiver of prosecution by
10 indictment and will consent to proceed by information rather than by
11 indictment.

12 (d) The defendant understands and agrees that he will not be
13 allowed to withdraw his plea should the Court fail to follow the
14 Government's sentencing recommendations.

15 (e) The defendant knowingly and voluntarily waives his
16 Constitutional and statutory rights to appeal his plea, conviction
17 and sentence. This waiver of appeal includes, but is not limited to,
18 an express waiver of the defendant's right to appeal his plea,
19 conviction and sentence on any ground, including any appeal right
20 conferred by 18 U.S.C. § 3742, and the defendant further agrees not
21 to contest his plea, conviction and sentence in any post-conviction
22 proceeding, including but not limited to a proceeding under 28 U.S.C.
23 § 2255.

24 (f) 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 (g) The defendant agrees that his base offense level for Wire
2 Fraud is seven (7) pursuant to Section 2B1.1(a)(1) of the 2008 United
3 States Sentencing Commission Guidelines Manual ("Sentencing
4 Guidelines"), plus sixteen (16) levels for loss more than \$1,000,000
5 but less than \$2,500,000 (§ 2B1.1(b)(1)(I)).

6 (h) The defendant agrees that a two (2) level increase applies
7 under Section 2B1.1(14)(A) of the Sentencing Guidelines, as the
8 defendant derived more than \$1,000,000 in gross receipts from one or
9 more financial institutions as a result of the offense.

10 (i) The defendant agrees to not move for any downward
11 adjustments in his offense levels under either Chapters Two or Three
12 of the Sentencing Guidelines. The defendant also agrees not to move
13 for a downward departure of his sentence whether under the Sentencing
14 Guidelines or the factors of 18 U.S.C. § 3553. The defendant
15 understands and agrees that this agreement by him includes, without
16 limitation, not moving for a downward departure of his offense level,
17 criminal history category or criminal history points as defined by
18 the Sentencing Guidelines. Additionally, the defendant agrees that
19 the application of the Sentencing Guidelines to his case results in a
20 reasonable sentence and that the defendant will not request that the
21 court apply the sentencing factors under Section 3553 of Title 18,
22 United States Code, to arrive at a sentence different than that
23 called for under the Sentencing Guidelines. The defendant
24 acknowledges that, if the defendant requests or suggests in any
25 manner a different sentence than what is called for under the
26 Sentencing Guidelines, the government, at its sole discretion, may
27 withdraw from this plea agreement and continue with its prosecution
28 of the defendant as if the parties had not entered into this Plea

1 Agreement.

2 (j) The defendant agrees the conduct to which he is pleading
3 requires mandatory restitution pursuant to Section 3663A(c)(1)(A)(ii)
4 of Title 18, United States Code, and agrees to pay the full amount of
5 restitution as ordered by the Court to all victims affected by this
6 offense. Defendant further agrees that he will not seek to discharge
7 any restitution obligation, or any part of such obligation, in any
8 bankruptcy proceeding. The defendant agrees that the restitution
9 order is not restricted to the amounts alleged in the specific
10 count(s) to which he is pleading guilty, and that the Court can order
11 the payment of restitution for the full loss caused by the
12 defendant's wrongful conduct. The defendant further agrees that he
13 will not attempt to discharge in any present or future bankruptcy
14 proceeding any restitution imposed by the Court.

15 (k) The defendant understands that the Court must consult the
16 Federal Sentencing Guidelines (as promulgated by the Sentencing
17 Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C.
18 §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United
19 States v. Booker and United States v. Fanfan, 543 U.S. 220, 125
20 S. Ct. 738 (2005)), and must take them into account when determining
21 a final sentence. The defendant understands that the Court will
22 determine a non-binding and advisory guideline sentencing range for
23 this case pursuant to the Sentencing Guidelines. The defendant
24 further understands that the Court will consider whether there is a
25 basis for departure from the guideline sentencing range (either above
26 or below the guideline sentencing range) because there exists an
27 aggravating or mitigating circumstance of a kind, or to a degree, not
28 adequately taken into consideration by the Sentencing Commission in

1 formulating the Guidelines. The defendant further understands that
2 the Court, after consultation and consideration of the Sentencing
3 Guidelines, must impose a sentence that is reasonable in light of the
4 factors set forth in 18 U.S.C. § 3553(a).

5 (1) The defendant agrees to cooperate fully with the Government
6 and any other federal, state, or local law enforcement agency, as
7 directed by the Government. As used in this Plea Agreement,
8 "cooperation" requires the defendant: (1) to respond truthfully and
9 completely to all questions, whether in interviews, in
10 correspondence, telephone conversations, before a grand jury, or at
11 any trial or other court proceeding; (2) to attend all meetings,
12 grand jury sessions, trials, and other proceedings at which the
13 defendant's presence is requested by the Government or compelled by
14 subpoena or court order; (3) to produce voluntarily any and all
15 documents, records, or other tangible evidence requested by the
16 Government; (4) not to participate in any criminal activity while
17 cooperating with the Government; and (5) to disclose to the
18 Government the existence and status of all money, property, or
19 assets, of any kind, derived from or acquired as a result of, or used
20 to facilitate the commission of, the defendant's illegal activities
21 or the illegal activities of any co-conspirators.

22 (m) If the defendant commits any crimes or if any of the
23 defendant's statements or testimony prove to be knowingly false,
24 misleading, or materially incomplete, or if the defendant otherwise
25 violates this Plea Agreement in any way, the Government will no
26 longer be bound by its representations to the defendant concerning
27 the limits on criminal prosecution and sentencing as set forth
28 herein. The determination whether the defendant has violated the

1 Plea Agreement will be under a probable cause standard. If the
2 defendant violates the Plea Agreement, he shall thereafter be subject
3 to prosecution for any federal criminal violation of which the
4 Government has knowledge, including but not limited to perjury, false
5 statements, and obstruction of justice. Because disclosures pursuant
6 to this Plea Agreement will constitute a waiver of the Fifth
7 Amendment privilege against compulsory self-incrimination, any such
8 prosecution may be premised on statements and/or information provided
9 by the defendant. Moreover, any prosecutions that are not time-
10 barred by the applicable statute of limitations as of the date of
11 this Plea Agreement may be commenced in accordance with this
12 paragraph, notwithstanding the expiration of the statute of
13 limitations between the signing of this Plea Agreement and the
14 commencement of any such prosecutions. The defendant agrees to waive
15 all defenses based on the statute of limitations or delay of
16 prosecution with respect to any prosecutions that are not time-barred
17 as of the date of this Plea Agreement.

18 (n) If it is determined that the defendant has violated any
19 provision of this Plea Agreement or if the defendant successfully
20 moves to withdraw his plea: (1) all statements made by the defendant
21 to the Government or other designated law enforcement agents, or any
22 testimony given by the defendant before a grand jury or other
23 tribunal, whether before or after this Plea Agreement, shall be
24 admissible in evidence in any criminal, civil, or administrative
25 proceedings hereafter brought against the defendant; and (2) the
26 defendant shall assert no claim under the United States Constitution,
27 any statute, Rule 11(f) of the Federal Rules of Criminal Procedure,
28 Rule 410 of the Federal Rules of Evidence, or any other federal rule,

1 that statements made by the defendant before or after this Plea
2 Agreement, or any leads derived therefrom, should be suppressed. By
3 signing this Plea Agreement, the defendant waives any and all rights
4 in the foregoing respects.

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

12 5. Agreements by the Government

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

18 (b) The United States agrees that if defendant's guideline
19 range, after any adjustments, falls within Zone B, C, or D of the
20 Sentencing Table, the Government will recommend that the defendant be
21 sentenced to imprisonment for the low end of the applicable guideline
22 range, and to a three (3) year term of supervised release.

23 (c) The Government agrees that the defendant's base offense
24 level for Wire Fraud is seven (7) pursuant to Section 2B1.1(a)(1) of
25 the Sentencing Guidelines, plus sixteen (16) levels for loss more
26 than \$1,000,000 but less than \$2,500,000 (§ 2B1.1(b)(1)(I)).

27 (d) The Government agrees that a two (2) level increase applies
28 under Section 2B1.1(14)(A) of the Sentencing Guidelines, as the

1 defendant derived more than \$1,000,000 in gross receipts from one or
2 more financial institutions as a result of the offense.

3 (e) The government agrees that the defendant's adjusted offense
4 level under the Sentencing Guidelines would be 22, assuming the
5 defendant receives a reduction for acceptance of responsibility under
6 Section 3E1.1 of the Sentencing Guidelines, and assuming that the
7 defendant does not commit any further criminal conduct after the
8 filing of the Information and Plea Agreement in this case.

9 (f) If the Government determines that the defendant has
10 provided substantial assistance to law enforcement authorities and
11 has complied with his obligations under paragraph 4(1) of the Plea
12 Agreement, the Government will move for and recommend, pursuant to
13 Section 5K1.1 of the Sentencing Guidelines and/or pursuant to Rule 35
14 of the Federal Rules of Criminal Procedure, a reduction from the
15 applicable guideline sentence. The defendant understands that it is
16 within the sole and exclusive discretion of the Government to
17 determine whether the defendant has provided substantial assistance.
18 The defendant understands that the Government also has sole and
19 exclusive discretion as to whether to recommend a reduction or to
20 recommend no reduction at all in the sentence, depending upon the
21 level of assistance the Government determines the defendant has
22 provided.

23 (g) The defendant further understands that a motion pursuant to
24 Section 5K1.1 of the Sentencing Guidelines is only a recommendation
25 and is not binding on the Court, that this Plea Agreement confers no
26 right upon the defendant to require that the Government make a
27 Section 5K1.1 motion, and that this Plea Agreement confers no remedy
28 upon the defendant in the event that the Government declines to make

1 a Section 5K1.1 motion. In particular, the defendant agrees not to
2 try to file a motion to withdraw his plea based on the fact that the
3 Government decides not to recommend a sentence reduction or
4 recommends a sentence reduction less than the defendant thinks is
5 appropriate. If the defendant does not comply with his obligations
6 under this Plea Agreement, and specifically with his obligations
7 under paragraph 4(1) of the Plea Agreement, then the Government is
8 free to institute new charges and/or add new charges, to make any
9 recommendation related to the defendant's sentence, and to move for
10 an upward departure in the defendant's adjusted offense level.

11 (h) The defendant acknowledges and understands that the
12 Government makes no other representations to him regarding
13 sentencing, including regarding fines, his criminal history or
14 criminal history points under Chapter Four of the Sentencing
15 Guidelines, or the restitution amount owed by the defendant. The
16 defendant understands that the Government is free to comment and to
17 make recommendations to the Court and the Probation Office regarding
18 those matters.

19 6. Factual Basis

20 The defendant will plead guilty because he is in fact guilty of
21 the crimes set forth in the information. The defendant also agrees
22 that the following are the facts of this case, although he
23 acknowledges that, as to other facts, the parties may disagree:

24 Beginning at a time unknown, but no later than October
25 2004, to in or about January 2007, in the State and Eastern
26 District of California, the defendant, along with David
27 Crisp, Carl Cole, and others executed a scheme and artifice
28 to defraud mortgage loan companies and federally insured
lending/financial institutions (collectively referred to
herein as "Lenders") of money and property, and did obtain
money and property from such Lenders, including but not
limited to SunTrust Mortgage, Pulte Mortgage, and GMAC, by
means of materially false and fraudulent pretenses,

1 representations, and promises. David Crisp and Carl Cole
2 owned and operated Crisp & Cole Real Estate ("CCRE"), a
3 real estate brokerage firm, and Tower Lending, an
4 affiliated mortgage brokerage that shared office space with
5 CCRE.

6 From October 2005 to January 2007, the defendant was
7 employed by Tower Lending as a loan officer. During his
8 tenure at Tower Lending, the defendant obtained and
9 processed at least sixty (60) mortgage loans from Lenders
10 for buyers of real property represented by CCRE. The
11 Lenders' loan funds were used to finance purchases of the
12 real properties.

13 On many of the loans processed by defendant at Tower
14 Lending, the defendant knowingly participated in and
15 facilitated the use of materially false and fraudulent
16 statements in loan applications and related transaction
17 documents, including false and fraudulent statements by the
18 borrowers and/or by CCRE or Tower Lending employees, to
19 obtain the loans from the Lenders. The false and
20 fraudulent statements in the loan applications and other
21 materials frequently included material misstatements of the
22 borrowers' income, employment status, and/or occupation,
23 and false statements concerning the borrowers' intent to
24 reside in the properties as owner-occupiers, among other
25 material misstatements and/or omissions. For example, the
26 defendant would at times falsely inflate a borrower's
27 income on the loan application and related documents, if it
28 appeared that the borrower would not qualify for a
particular loan based on the borrower's actual income. The
defendant knowingly processed these false and fraudulent
loan applications, and would cause them to be submitted to
Lenders, resulting in the Lenders funding mortgage loans on
the basis of such materially false and misleading
information. The Lenders then distributed the mortgage
loan funds to escrow companies or other companies, often
across state lines. The defendant performed these tasks,
including without limitation the false overstatement of
borrowers' incomes, mainly at the direction and request of
David Crisp, Carl Cole, Julie Farmer (CCRE's Office
Manager), and Sneha Mohammadi (Tower Lending's Office
Manager and CCRE's Chief Financial Officer).

23 During the period from October 2004 to December 2006, the
24 defendant purchased approximately eleven (11) real
25 properties with a total purchase value at the time of
26 approximately \$4.4 million, and obtained loans to finance
27 such purchases, and also refinanced the mortgage on one of
28 these real properties. In order to qualify for these
loans, in almost all of these loan applications he
submitted to the Lenders, the defendant knowingly made
material misstatements and/or omitted relevant and material
information. Based on his experience in the industry, the
defendant knew and expected that the Lenders would
reasonably rely on such misstatements and omissions in

1 approving the funding of the mortgage loans for defendant's
2 purchases of real property. The defendant's misstatements
3 and omissions included, but are not limited to:
4 misstatements concerning his income and his outstanding
5 liabilities (including his liabilities with respect to
6 other real property), and misstatements that he would use
7 certain properties as owner-occupied residences when in
8 fact he had no intent to reside in the properties.

9
10 The defendant and others at CCRE and Tower Lending knew
11 that the misstatements and/or omissions that the defendant
12 and others caused to be submitted to the Lenders in
13 connection with mortgage loan applications were materially
14 false and fraudulent. The mortgage loans funded on the
15 basis of such applications were knowingly obtained through
16 materially false and fraudulent statements.

17
18 Specifically, in or around July 2006, the defendant
19 submitted a loan application to SunTrust Mortgage to
20 refinance the real property located at 627 A Street, Taft,
21 California. In the refinance application, the defendant
22 knowingly, and with the intent to defraud, failed to list
23 the total outstanding obligations he had on other real
24 properties he then owned. As a result of the material
25 false and fraudulent information the defendant provided to
26 SunTrust Mortgage, SunTrust Mortgage disbursed
27 approximately \$170,250 in funds for the refinancing.

28
29 In furtherance of the scheme and artifice to defraud, and
30 to obtain monies through false and fraudulent pretenses,
31 and to aid and abet the same, on or about August 29, 2006
32 the defendant caused to be transmitted by means of wire in
33 interstate commerce, a wire sign and signal, from Georgia
34 to Bakersfield, California, in the State and Eastern
35 District California, specifically: a wire transfer of
36 \$168,796.38 from SunTrust Mortgage, located in Georgia, to
37 Ticor Title Company in Bakersfield, California, on account
38 of the refinance application submitted by the defendant for
39 627 A Street, Taft, California. This property was
40 eventually foreclosed upon in October 2007 after the
41 defendant failed to make the loan payments when due.

42
43 At all relevant times herein, in carrying out these
44 actions, the defendant acted with the intent to defraud.
45 The defendant's criminal conduct involved 10 or more Lender
46 victims. In total, the defendant defrauded Lenders of
47 approximately \$1,078,389.

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1 7. Potential Sentence

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

4 (a) Imprisonment.

5 Maximum: Twenty (20) years.

6 (b) Fine.

7 Maximum: Two Hundred and Fifty Thousand Dollars
8 (\$250,000.00).

9 (c) Both such fine and imprisonment.

10 (d) Restitution- Mandatory

11 (e) Term of Supervised Release:

12 Maximum: Three (3) years.

13 (Should the defendant violate any of the terms of his
14 supervised release, he can be returned to prison for
15 the period of supervised release actually imposed by
16 the Court or two (2) years, whichever is less.)

17 (f) Penalty Assessment.

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

19 8. Waiver of Rights

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

22 (a) The defendant is giving up his right to plead not guilty
23 and to persist in that plea. If the defendant persisted in a plea of
24 not guilty to the charges against him, he would have the right to be
25 represented by an attorney at all stages of the proceedings, and
26 would have a right to a public and speedy trial. The trial could be
27 either a jury trial or a trial by a judge sitting without a jury.
28 The defendant has a right to a jury trial. However, in order that
the trial be conducted by the judge sitting without a jury, the
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 The defendant understands that by pleading guilty he is waiving
4 all of the rights set forth above, and acknowledges that his attorney
5 has explained those rights to him and the consequences of his waiver
6 of those rights.

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

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 Information. 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.

19
20 Dated: 18 SEP 09

JERALD ALLEN TEIXEIRA
Defendant


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24 Dated: 18 SEP 09

DAVID TORRES
Attorney for Defendant
JERALD ALLEN TEIXEIRA

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Dated: 9/22/09

LAWRENCE G. BROWN
United States Attorney

By: 
STANLEY A. BOONE
SHEILA K. OBERTO
KIRK E. SHERRIFF
Assistant U.S. Attorneys