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9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,)	Case No.: 1:09-cr-00374 GSA
)	
13 Plaintiff,)	MEMORANDUM OF PLEA AGREEMENT
14)	PURSUANT TO RULE 11(c)(1)(C) OF
)	THE FEDERAL RULES OF CRIMINAL
15 v.)	PROCEDURE
)	
16)	
17 GENE DWAYNE CORDENIZ,)	Date: Sept. 30, 2009
)	Time: 1:30 p.m.
18 Defendant.)	Court: Ten
)	(Hon. Gary S. Austin)
19)	

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22 Pursuant to Rule 11(c)(1)(C) of the Federal Rules of
23 Criminal Procedure, the United States of America, by and through
24 Lawrence G. Brown, the United States Attorney for the Eastern
25 District of California, and Assistant United States Attorney Kirk
26 E. Sherriff; and defendant GENE DWAYNE CORDENIZ and his attorney,
27 William C. Hahesy, have agreed as follows:
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1 1. Scope of Agreement

2 This document contains the complete Memorandum of Plea
3 Agreement ("Plea Agreement") between the United States Attorney's
4 Office for the Eastern District of California ("United States")
5 and defendant GENE DWAYNE CORDENIZ regarding this case. This
6 Plea Agreement is limited to the United States Attorney's Office
7 for the Eastern District of California and cannot bind any other
8 federal, state, or local prosecuting, administrative, or
9 regulatory authorities.

10 2. Rule 11(c)(1)(C) Specific Sentence Agreement

11 The government and defendant agree that a specific sentence,
12 set forth below in Section 7, would be appropriate in this case.
13 Consequently, this Plea Agreement is being offered to the Court
14 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
15 Procedure. Under the provisions of Rule 11(c)(3)(A), the Court
16 may accept or reject the agreement, or may defer its decision as
17 to the acceptance or rejection until there has been an
18 opportunity to consider the pre-sentence report. If the Court
19 accepts the Plea Agreement, the Court must inform the defendant
20 that it will embody in the judgment and sentence the disposition
21 provided for in this Plea Agreement. If the Court rejects this
22 Plea Agreement, the Court shall so advise defendant, allow
23 defendant the opportunity to withdraw his plea, and advise
24 defendant that if he persists in a guilty plea the disposition of
25 the case may be less favorable to him than is contemplated by
26 this Plea Agreement.

1 3. Charges

2 Defendant GENE DWAYNE CORDENIZ acknowledges that he will be
3 charged in an Information with three misdemeanor counts, as
4 follows:

5 COUNT ONE: Distribution and Sale of an Unregistered
6 Pesticide, in violation of Title 7,
7 United States Code, Sections
8 136j(a)(1)(A) & 136l(b)(1);

9 COUNT TWO: Distribution and Sale of a Misbranded
10 Pesticide, in violation of Title 7, United
11 States Code, Sections 136j(a)(1)(E) &
12 136l(b)(1); and

13 COUNT THREE: Production of Pesticide in an Unregistered
14 Establishment, in violation of Title 7,
15 United States Code, Sections 136e,
16 136j(a)(2)(L) & 136l(b)(1).

17 4. Nature, Elements and Possible Defenses

18 Defendant GENE DWAYNE CORDENIZ has read the charges against
19 him contained in the Information, and those charges have been
20 fully explained to him by his attorney. Further, defendant fully
21 understands the nature and elements of the crimes in the
22 Information to which he is pleading guilty, together with the
23 possible defenses thereto, and has discussed them with his
24 attorney.

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1 The elements of the misdemeanor crime of Distribution and
2 Sale of an Unregistered Pesticide, 7 U.S.C. §§ 136j(a)(1)(A) &
3 136l(b)(1), are:

- 4 (1) Defendant distributed or sold to any person a
5 pesticide that was not registered with the EPA
6 under Title 7, United States Code, section 136a;
7 and
8 (2) Defendant acted knowingly.

9 The elements of the misdemeanor crime of Distribution and
10 Sale of Misbranded Pesticide, 7 U.S.C. §§ 136j(a)(1)(E) &
11 136l(b)(1), are:

- 12 (1) Defendant distributed or sold to any person a
13 pesticide that was misbranded; and
14 (2) Defendant acted knowingly.

15 The elements of the misdemeanor crime of Production of
16 Pesticide in Unregistered Establishment, 7 U.S.C. §§ 136e,
17 136j(a)(2)(L) & 136l(b)(1), are:

- 18 (1) Defendant produced a pesticide subject to FIFRA,
19 or an active ingredient used in producing such
20 pesticide, at an establishment that was not
21 registered with the EPA; and
22 (2) Defendant acted knowingly.

23 5. Agreements by Defendant Gene Dwayne Cordeniz

24 (a) Defendant agrees that this Plea Agreement shall be filed
25 with the Court and become a part of the record of the case.

26 (b) Guilty Plea: Defendant agrees to enter a plea of guilty
27 to the Information which charges him with one misdemeanor count
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1 of Distribution and Sale of Unregistered Pesticide, in violation
2 of Title 7, United States Code, Sections 136j(a)(1)(A) & 136l(b);
3 one misdemeanor count of Distribution and Sale of Misbranded
4 Pesticide, in violation of Title 7, United States Code, Sections
5 136j(a)(1)(E) & 136l(b); and one misdemeanor count of Production
6 of Pesticide in Unregistered Establishment, in violation of
7 Title 7, United States Code, Sections 136e, 136j(a)(2)(L) &
8 136l(b). The defendant agrees that he is in fact guilty of these
9 charges and that the facts set forth below in the Factual Basis
10 at Section 8 are accurate.

11 (c) Fine: Defendant agrees to pay Eight Thousand Dollars
12 (\$8,000) as a criminal fine, under Section 136l(b)(1) of Title 7,
13 United States Code. The fine shall be paid at time of
14 sentencing. Defendant understands that this Plea Agreement is
15 voidable by the government if defendant fails to pay the
16 stipulated fine as required by this Agreement.

17 (d) Restitution: Defendant agrees to pay restitution under
18 18 U.S.C. §§ 3563(b)(2) and 3556 to the following entities:
19 (1) \$1,304 to the City of Tulare Fire Rescue, (2) \$9,040 to the
20 City of Visalia Haz-Mat Response, (3) \$21,046 to Parc
21 Environmental, and (4) \$6,205 to Tulare County Environmental
22 Health Services. Defendant and the United States agree that
23 defendant may satisfy his restitution obligations as set forth in
24 this paragraph by making full payments to these entities in the
25 above-listed amounts, on or before October 15, 2010, in
26 satisfaction of defendant's obligations to these parties under a
27 stipulated settlement or final judgment in the civil case *People*
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1 of the State of California v. Gene Cordeniz, et al., Tulare
2 County Superior Court, No. 08-228078.

3 (e) Special Assessment: Defendant agrees to pay a special
4 assessment of Seventy-Five Dollars (\$75) at the time of
5 sentencing by delivering a check or money order, payable to the
6 United States District Court, to the United States Probation
7 Office prior to the sentencing hearing. Defendant understands
8 that this Plea Agreement is voidable by the government if
9 defendant fails to pay the assessment as required by this
10 Agreement.

11 (f) Defendant agrees that, at or before the entry of plea
12 proceeding, he will sign a written waiver of prosecution by
13 indictment and will consent to proceed by information rather than
14 by indictment.

15 (g) Defendant further acknowledges that his plea of guilty
16 is voluntary and that no force, threats, promises or
17 representations have been made to anybody, nor agreement reached,
18 other than those set forth expressly in this agreement, to induce
19 defendant to plead guilty.

20 (h) Defendant agrees that the applicable base offense level
21 in this case is eight (8) pursuant to Section 2Q1.2 of the 2008
22 United States Sentencing Commission Guidelines Manual.

23 (i) Defendant further agrees that the reasonable and
24 appropriate fine payable by defendant in this case, under Section
25 1361(b)(1) of Title 7, United States Code, is Eight Thousand
26 Dollars (\$8,000).

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1 (j) Defendant stipulates and agrees not to move for or
2 argue in support of any sentence other than the sentence as set
3 forth in Section 7 of this Plea Agreement. Defendant agrees not
4 to move for a downward departure of his sentence in this case,
5 including, but not limited to, a downward departure of his
6 offense level, criminal history category, or criminal history
7 points as defined by the United States Sentencing Guidelines.

8 (k) Defendant further agrees that, in the circumstances of
9 this case, the specific sentence as set forth in Section 7 is an
10 appropriate and reasonable sentence under the factors set out at
11 Section 3553(a) of Title 18, United States Code. If the Court
12 desires to impose a sentence other than the sentence set forth in
13 Section 7, defendant shall be entitled to withdraw any plea or
14 pleas of guilty and will not be subject to sentencing pursuant to
15 this Plea Agreement unless defendant and the United States
16 consent in Court to proceed with the Plea Agreement and the
17 Court's indicated sentence.

18 (l) Defendant knowingly and voluntarily waives his
19 Constitutional and statutory rights to appeal his plea,
20 conviction, and sentence imposed in this case, provided that the
21 sentence imposed in this case is consistent with Section 7 of
22 this Plea Agreement or, if not, that defendant and the United
23 States have consented in Court to proceed with the Plea Agreement
24 and the Court's indicated sentence. This waiver of appeal
25 includes, but is not limited to, an express waiver of defendant's
26 right to appeal his plea, conviction, and sentence on any ground,
27 including the waiver of any appeal right conferred by

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1 Section 3742 of Title 18, United States Code.

2 (m) Defendant also gives up any right he may have to bring
3 a post-appeal attack on his conviction or sentence, provided that
4 the sentence imposed in this case is consistent with Section 7 of
5 this Plea Agreement or, if not, that defendant and the United
6 States have consented in Court to proceed with the Plea Agreement
7 and the Court's indicated sentence. Defendant specifically
8 agrees not to contest his plea, conviction, or sentence in any
9 post-conviction proceeding, including but not limited to a
10 proceeding under 28 U.S.C. §§ 2241 or 2255.

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

19 6. Agreements by the United States

20 (a) The United States will recommend that defendant be
21 sentenced pursuant to the terms of this Plea Agreement,
22 specifically Section 7 of the Plea Agreement.

23 (b) The United States will recommend a two-level reduction
24 (if the offense level is less than 16) or a three-level reduction
25 (if the offense level reaches 16) in the computation of
26 defendant's offense level, if defendant clearly demonstrates
27 acceptance of responsibility for his conduct as defined in
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1 Section 3E1.1 of the United States Sentencing Commission
2 Guidelines Manual.

3 (c) The United States agrees that the applicable base
4 offense level in this case is eight (8) pursuant to Section 2Q1.2
5 of the 2008 United States Sentencing Commission Guidelines
6 Manual.

7 (d) The United States further agrees that the reasonable
8 and appropriate fine payable by defendant in this case, under
9 Section 1361(b)(1) of Title 7, United States Code, is Eight
10 Thousand Dollars (\$8,000).

11 (e) The United States stipulates and agrees not to move for
12 or argue in support of any sentence other than the sentence as
13 set forth in Section 7 of this Plea Agreement. The United States
14 agrees that, in the circumstances of this case, the specific
15 sentence as set forth in Section 7 is an appropriate and
16 reasonable sentence under the factors set out at Section 3553(a)
17 of Title 18, United States Code. Further, the United States
18 agrees to recommend that the Court follow the Probation Office's
19 recommendation as to the type of probation in this case.

20 (f) Defendant acknowledges and understands that the United
21 States makes no other representations to him regarding
22 sentencing, including regarding fines, his criminal history or
23 criminal history points under Chapter Four of the United States
24 Sentencing Guidelines, or whether additional enhancements or
25 reductions under Chapter Three of the United States Sentencing
26 Guidelines apply.

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2 7. Specific Sentence Agreement by Defendant and the
3 United States

4 Pursuant to Rule 11(c)(1)(C), defendant and the United
5 States agree:

- 6 i. Defendant shall receive a sentence of three (3)
7 years probation;
- 8 ii. The Court shall impose a criminal fine of Eight
9 Thousand Dollars (\$8,000) on defendant, which
10 shall be paid at time of sentencing. Defendant
11 shall pay this amount by certified cashier's
12 check, or its equivalent, made payable to the
13 "CLERK, U.S.D.C."; and
- 14 iii. At the time of sentencing, the defendant shall pay
15 a special assessment of Seventy-Five Dollars
16 (\$75). Defendant shall pay this amount by
17 certified cashier's check, or its equivalent, made
18 payable to the "CLERK, U.S.D.C."
- 19 iv. Defendant shall pay restitution under 18 U.S.C.
20 §§ 3563(b)(2) and 3556 to the following entities:
21 (1) \$1,304 to the City of Tulare Fire Rescue,
22 (2) \$9,040 to the City of Visalia Haz-Mat
23 Response, (3) \$21,046 to Parc Environmental
24 Construction, and (4) \$6,205 to Tulare County
25 Environmental Health Services. Defendant may
26 satisfy his restitution obligations as set forth
27 in this paragraph by making full payments to these
28 entities in the above-listed amounts, on or before

1 October 15, 2010, in satisfaction of defendant's
2 obligations to these parties under a stipulated
3 settlement or final judgment in the civil case
4 *People of the State of California v. Gene*
5 *Cordeniz, et al.*, Tulare County Superior Court,
6 No. 08-228078.

7 8. Factual Basis

8 Defendant will plead guilty because he is in fact guilty of
9 the crimes set forth in the Information. Defendant also agrees
10 that the following are the facts of this case, although he
11 acknowledges that, as to other facts, the parties may disagree:

12 Defendant GENE DWAYNE CORDENIZ was at all relevant
13 times a resident of Tulare, California, and was the co-
14 owner of and operated GB&S MARKETING, INC. ("GB&S"), a
15 California corporation located at 1865 West Tulare
16 Avenue, Tulare, California ("1865 West Tulare Avenue").
17 Defendant was the President of GB&S and was responsible
18 for the company's operations. Defendant and GB&S were
19 engaged in, among other business, the production, sale,
20 and distribution of cleaning and sanitizing products
21 for the dairy industry, including a product called
22 "Liquid Sani." Defendant and GB&S produced, sold, and
23 distributed Liquid Sani to dairies for use in
24 sanitizing and disinfecting dairy equipment.

25 GB&S was incorporated on or about August 27, 2003.
26 From in or around August 2003 through in or around
27 March 2008, defendant produced, sold, and distributed
28 Liquid Sani through GB&S to dairies within the State
29 and Eastern District of California. Defendant and GB&S
30 produced Liquid Sani by purchasing solutions of sodium
31 hypochlorite from various distributors, repackaging the
32 sodium hypochlorite into fifty-five gallon and/or
33 other-sized drums, and affixing Liquid Sani labels to
34 the drums. Defendant and GB&S represented that Liquid
35 Sani was a 12.5% solution of sodium hypochlorite
36 (commercial-grade bleach). Defendant and GB&S sold and
37 distributed Liquid Sani in containers bearing labels
38 which stated that the product was intended to sanitize
39 dairy equipment. Defendant knew that neither he nor
40 GB&S had registered Liquid Sani as a pesticide with the
41 EPA.

1 From in or around August 2003 to in or around
2 March 2008, Defendant and GB&S listed on Liquid Sani
3 labels, without authorization, an EPA product
4 registration number that did not in fact belong to
5 Liquid Sani or any other product produced by defendant
6 or GB&S. Defendant caused this purported EPA
7 registration number to be listed on the Liquid Sani
8 labels, knowing that in fact defendant and GB&S had
9 never registered Liquid Sani with the EPA. From in or
10 around August 2003 to in or around March 2008,
11 Defendant and GB&S also placed on Liquid Sani labels,
12 without authorization, an EPA establishment
13 registration number that did not in fact belong to the
14 1865 West Tulare establishment or to defendant or GB&S.
15 Defendant caused this purported EPA establishment
16 registration number to be listed on the Liquid Sani
17 labels, knowing that in fact defendant and GB&S had
18 never registered the 1865 West Tulare establishment
19 with the EPA.

20 From in or around August 2003 to in or around
21 March 2008, defendant and GB&S produced Liquid Sani at
22 an establishment located at 1865 West Tulare Avenue.
23 Defendant and GB&S knew that the 1865 West Tulare
24 establishment was not registered with the EPA at any
25 point during this time period, yet defendant and GB&S
26 nonetheless produced Liquid Sani at this establishment.

27 9. Potential Sentence

28 The following is the maximum potential sentence that
defendant faces on each of Count One (7 U.S.C. §§ 136j(a)(1)(A) &
136l(b)(1)), Count Two (7 U.S.C. §§ 136j(a)(1)(E) & 136l(b)(1)),
and Count Three (7 U.S.C. §§ 136e, 136j(a)(2)(L) & 136l(b)(1)):

(a) Imprisonment.

Maximum: One (1) year.

(b) Fine.

Maximum: \$50,000 (Fifty-Thousand Dollars).

(c) Both such fine and imprisonment.

(d) Term of Supervised Release:

Maximum: One (1) year.

(Should the defendant violate any of the terms of

1 his supervised release, he can be returned to
2 prison for the period of supervised release
3 actually imposed by the Court or one (1) year,
4 whichever is less.)

5 (e) Penalty Assessment.

6 Mandatory: \$25 (Twenty-Five Dollars).

7 10. Waiver of Rights

8 (a) Defendant understands that by pleading guilty he is
9 waiving certain rights, including the following: (1) to plead
10 not guilty and to persist in that plea if already made; (2) to be
11 tried by a jury; (3) to be represented at trial by an attorney,
12 who would be appointed if necessary; (4) to subpoena witnesses to
13 testify on his behalf; (5) to confront and cross-examine
14 witnesses against him; and (6) not to be compelled to testify,
15 and that no inference of guilt could be drawn from such refusal
16 to testify.

17 (b) If defendant ever attempts to vacate his plea, dismiss
18 the underlying charges, or reduce or set aside his sentence on
19 any count(s) to which he is pleading guilty, the United States
20 shall have the right (1) to prosecute defendant on any and all
21 count(s) to which he pleaded guilty, (2) to reinstate any counts
22 that may be dismissed pursuant to this Plea Agreement, and (3) to
23 file any new charges that would otherwise be barred by this Plea
24 Agreement. The decision to pursue any or all of these options is
25 solely in the discretion of the United States Attorney's Office.
26 By signing this Plea Agreement, defendant agrees to waive any
27 objections, motions, and defenses he might have to the

1 government's decision. Defendant specifically agrees not to
2 raise any objections based on the passage of time with respect to
3 such counts including, but not limited to, any statutes of
4 limitation or any objections based on the Speedy Trial Act or the
5 Speedy Trial Clause of the Sixth Amendment.

6 (c) Defendant understands that by pleading guilty he is
7 waiving all of the rights set forth above. Defendant
8 acknowledges that his attorney has explained to him those rights
9 and the consequences of his waiver of such rights.

10 11. Right to Counsel

11 Defendant understands that he has a right to counsel
12 throughout his case from his initial appearance through his trial
13 or guilty plea, or any dismissal of the case against him, and
14 through and including any sentencing. If not for the waiver of
15 appeal rights in this Plea Agreement, defendant would also have a
16 right to counsel on a direct appeal in his case. Defendant
17 understands that the right to counsel includes the provision of
18 defense counsel through the Court if defendant cannot afford to
19 hire counsel.

20 12. Questions by Court

21 Defendant understands that, if the Court questions him under
22 oath, on the record, and in the presence of counsel about the
23 offense to which he has pleaded guilty, his answers, if false,
24 may later be used against him in a prosecution for perjury.

25 13. Entire Plea Agreement

26 (a) Other than this Plea Agreement, no agreement,
27 understanding, promise, or condition exists between the United
28

1 States and defendant. Nor will any such agreement,
2 understanding, promise, or condition exist unless it is committed
3 to writing and signed by defendant, counsel for defendant, and
4 counsel for the United States.

5 (b) This plea of guilty is freely and voluntarily made and
6 is not the result of force or threats, or of any promises apart
7 from those specifically set forth in this Plea Agreement.

8 14. Court

9 Defendant understands that the Court must consult the
10 Federal Sentencing Guidelines (as promulgated by the Sentencing
11 Commission pursuant to the Sentencing Reform Act of 1984, 18
12 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by
13 United States v. Booker and United States v. Fanfan, 543 U.S.
14 220, 125 S. Ct. 738 (2005)), and must take them into account when
15 determining a final sentence. Defendant understands that the
16 Court will determine a non-binding and advisory guideline
17 sentencing range for this case pursuant to the Sentencing
18 Guidelines. Defendant further understands that the Court will
19 consider whether there is a basis for departure from the
20 guideline sentencing range (either above or below the guideline
21 sentencing range) because there exists an aggravating or
22 mitigating circumstance of a kind, or to a degree, not adequately
23 taken into consideration by the Sentencing Commission in
24 formulating the Guidelines. Defendant further understands that
25 the Court, after consultation and consideration of the Sentencing
26 Guidelines, must impose a sentence that is reasonable in light of
27 the factors set forth in 18 U.S.C. § 3553(a).

1 15. Presentence Report

2 Defendant understands that the United States Probation
3 Office is not a party to this agreement and may conduct an
4 independent investigation of defendant's activities and his
5 background. It may then prepare a presentence report which it
6 will submit to the Court as its independent sentencing
7 recommendation. In addition, the United States will fully
8 apprise the Probation Office, as well as the Court, of the full
9 and true nature, scope and extent of defendant's criminal
10 activities, including information on his background and criminal
11 history.

12
13 APPROVALS AND SIGNATURES

14
15 A. GENE DWAYNE CORDENIZ: I, GENE DWAYNE CORDENIZ, hereby
16 expressly acknowledge the following: (1) I have read this entire
17 Agreement; (2) I have carefully reviewed every part of this
18 Agreement with my attorney; (3) I fully and completely understand
19 each and every one of its terms; (4) I am fully satisfied with
20 the advice and representation provided to me by my attorney; and
21 (5) I have signed this agreement voluntarily.

22
23 Dated: _____

GENE DWAYNE CORDENIZ

Defendant

1 15. Presentence Report

2 Defendant understands that the United States Probation
3 Office is not a party to this agreement and may conduct an
4 independent investigation of defendant's activities and his
5 background. It may then prepare a presentence report which it
6 will submit to the Court as its independent sentencing
7 recommendation. In addition, the United States will fully
8 apprise the Probation Office, as well as the Court, of the full
9 and true nature, scope and extent of defendant's criminal
10 activities, including information on his background and criminal
11 history.

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13 APPROVALS AND SIGNATURES

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15 A. GENE DWAYNE CORDENIZ: I, GENE DWAYNE CORDENIZ, hereby
16 expressly acknowledge the following: (1) I have read this entire
17 Agreement; (2) I have carefully reviewed every part of this
18 Agreement with my attorney; (3) I fully and completely understand
19 each and every one of its terms; (4) I am fully satisfied with
20 the advice and representation provided to me by my attorney; and
21 (5) I have signed this agreement voluntarily.


22
23 Dated: 9/11/09

Gene Dwayne Cordenz
GENE DWAYNE CORDENIZ

24 Defendant
25
26
27
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1 B. Defense Counsel: The undersigned is counsel for GENE
2 DWAYNE CORDENIZ. In connection with such representation, I
3 acknowledge that: (1) I have discussed this Agreement with my
4 client; (2) I have fully explained each one of the Agreement's
5 terms to my client; (3) I have fully answered each and every
6 question put to me by my client regarding the Agreement; and
7 (4) I believe my client completely understands all of the
8 Agreement's terms.


9 Dated: 9/14/09



WILLIAM C. HAHESY
Attorney for Defendant

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13
14
15
16
17 C. Attorney for United States: I accept and agree to this
18 Plea Agreement on behalf of the government.

19 Dated: 9/18/09

LAWRENCE G. BROWN
United States Attorney
By: 

KIRK E. SHERRIFF
Assistant U.S. Attorney