



SEALED

Office of the United States Attorney
District of Nevada
501 Las Vegas Boulevard, Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336

-oOo-

Defendant.

PLEA AGREEMENT

The parties to this Plea Agreement are the United States of America and Daryll Reese. This Plea Agreement binds the defendant and the United States Attorney's Office for the

1 District of Nevada. It does not bind any other prosecuting, administrative, or regulatory
2 authority, the United States Probation Office, or the Court.

3 The Plea Agreement sets forth the parties' agreement regarding criminal charges
4 referenced in the Plea Agreement and applicable sentences, fines, restitution and forfeiture. It
5 does not control or prohibit the United States or any agency or third party from seeking any
6 other civil or administrative remedies directly or indirectly against the defendant.

7 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

8 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to
9 count one of the Superseding Indictment, charging conspiracy to commit bank fraud, mail fraud,
10 and wire fraud in violation of 18 U.S.C. § 1349, and count three of the Superseding Indictment
11 charging bank fraud in violation of 18 U.S.C. § 1344.

12 The defendant also agrees to the imposition of the in personam criminal forfeiture
13 money judgment as set forth in the Plea Agreement and the Forfeiture Allegations of the
14 Superseding Indictment.

15 B. Waiver of Trial Rights. The defendant acknowledges that he has been advised
16 and understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain
17 rights guaranteed to all defendants by the laws and the Constitution of the United States.
18 Specifically, the defendant is giving up:

19 1. The right to proceed to trial by jury on all charges, or to a trial by a judge
20 if the defendant and the United States both agree;

21 2. The right to confront the witnesses against the defendant at such a trial,
22 and to cross-examine them;

23 3. The right to remain silent at such a trial, with assurance that his silence
24 could not be used against him in any way;

1 4. The right to testify in his own defense at such a trial if he so chooses;

2 5. The right to compel witnesses to appear at such a trial and testify in the
3 defendant's behalf; and

4 6. The right to have the assistance of an attorney at all stages of such
5 proceedings.

6 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw his guilty
7 plea after he has entered it in court.

8 D. Additional Charges. The United States agrees not to bring any additional
9 charges against the defendant arising out of the investigation in the District of Nevada which
10 culminated in this Plea Agreement and based on conduct known to the United States, except
11 that the United States reserves the right to prosecute the defendant for any crime of violence as
12 defined by 18 U.S.C. § 16, and for any crime under or related to Title 26 of the United States
13 Code.

14 **III. ELEMENTS OF THE OFFENSES**

15 A. The elements of conspiracy under 18 U.S.C. § 1349 are the following:

16 First: Beginning and ending on the dates set forth in count one of the
17 Superseding Indictment, there was an agreement between two or more persons to commit the
18 crimes of bank fraud (18 U.S.C. § 1344), mail fraud (18 U.S.C. § 1341), and wire fraud (18
19 U.S.C. § 1343); and

20 Second: The defendant became a member of the conspiracy knowing of at least
21 one of its objects and intending to help accomplish it.

22 *See Ninth Circuit Manual of Model Jury Instruction, Criminal 8.20 (2010 ed.).*

23 B. The essential elements for the crime of Bank Fraud, in violation of Title 18,
24 United States Code, Section 1344, are the following:

1 First: The defendant knowingly carried out a scheme or plan to obtain money
2 or property from Pacific Mercantile Bank by making false statements or promises;

3 Second: The defendant knew that the statements or promises were false;

4 Third: The statements or promises were material; that is, they had a natural
5 tendency to influence, or were capable of influencing, a financial institution to part with money
6 or property;

7 Fourth: The defendant acted with the intent to defraud; and

8 Fifth: Pacific Mercantile Bank was federally insured.

9 *See Ninth Circuit Manual of Model Jury Instructions, Criminal 8.127 (2010 ed.).*

10 C. The essential elements for the crime of Mail Fraud, Title 18, United
11 States Code, Section 1341, are the following:

12 First: The defendant knowingly participated in a scheme or plan to defraud, or a
13 scheme or plan for obtaining money or property by means of false or fraudulent pretenses,
14 representations, or promises;

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

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

20 Fourth: The defendant used, or caused to be used, the mails to carry out or
21 attempt to carry out an essential part of the scheme.

22 *See Ninth Circuit Manual of Model Jury Instructions, Criminal 8.121 (2010 ed.).*

23 D. The essential elements for the crime of Wire Fraud, Title 18, United States Code,
24 Section 1343, are the following:

1 First: The defendant knowingly participated in a scheme or plan to defraud, or a
2 scheme or plan for obtaining money or property by means of false or fraudulent pretenses,
3 representations, or promises;

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

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

9 Fourth: The defendant used, or caused to be used, interstate wire
10 communications to carry out or attempt to carry out an essential part of the scheme.

11 See Ninth Circuit Manual of Model Jury Instructions, Criminal 8.121 and 8.124 (2010 ed.).

12 **IV. FACTS SUPPORTING GUILTY PLEA**

13 A. The defendant will plead guilty because he is, in fact and under the law, guilty of
14 the crimes charged.

15 B. The defendant acknowledges that if he elected to go to trial instead of pleading
16 guilty, the United States could prove his guilt beyond a reasonable doubt and establish its right
17 to the forfeiture money judgment. The defendant further acknowledges that his admissions and
18 declarations of fact set forth below satisfy every element of the charged offense.

19 C. The defendant waives any potential future claim that the facts he admitted in this
20 Plea Agreement were insufficient to satisfy the elements of the charged offenses.

21 D. The defendant admits and declares under penalty of perjury that the facts set
22 forth below are true and correct:

23 1. From in or about January 2003, to in or about November 2006, in the State and
24 Federal District of Nevada, Daryll Reese, did knowingly and willfully combine, conspire, and

1 agree with Derrick Phelps, Cynthia Phelps, Linda Mack, Tai Keyster, also known as Tai
2 Madeira, and others:

3 a. To devise a scheme and artifice to defraud and to obtain money and
4 property under the custody and control of federally insured financial institutions, by means of
5 materially false and fraudulent pretenses, representations and promises that would cause a bank
6 to part with money and property, in violation of Title 18, United States Code, Section 1344;

7 b. To use the United States Postal Service and commercial interstate carriers
8 to send and deliver mortgage loan applications and other supporting documentation, for
9 purposes of executing a scheme and artifice to defraud and for obtaining money and property by
10 means of materially false and fraudulent pretenses, representations, and promises, in violation
11 of Title 18, United States Code, Section 1341; and

12 c. To transmit and cause to be transmitted by means of wire
13 communications in interstate commerce funds and documents, for purposes of executing a
14 scheme and artifice to defraud and for obtaining money and property by means of materially
15 false and fraudulent pretenses, representations, and promises, in violation of Title 18, United
16 States Code, Section 1343.

17 The Objectives of the Conspiracy and Scheme To Defraud

18 2. The objective of the conspiracy and scheme was to obtain mortgage loans from
19 lenders by causing materially false information to be placed in the buyers' mortgage loan
20 applications and supporting documentation. Through approximately 233 transactions,
21 defendant and his coconspirators obtained money and property from lenders by causing money
22 from the mortgage loans to be disbursed to their own use and benefit.

23 ...

24 ...

Manner and Means

3. The manner and means by which the objectives of the conspiracy were accomplished include, but were not limited to, the following:

a. Defendant's coconspirators solicited persons with good credit ratings to purchase real estate. In some instances, defendant and his coconspirators caused buyers to purchase multiple houses at or about the same time. By purchasing multiple houses in a short period of time, the prior purchases would not show up on the buyer's credit report and lenders would not be aware of the other purchases. Defendant, Daryll Reese, and his coconspirators knowingly and intentionally concealed buyers' earlier purchases from lenders, when defendant, Daryll Reese, and his coconspirators then and there well knew that the earlier purchases were material to the lenders' lending decisions.

b. Defendant's coconspirators made offers to purchase properties above the sellers' asking prices.

c. Defendant's coconspirators caused the sellers to agree that part of the excess funds would be redirected to the buyers under the pretense of making upgrades and repairs to the properties. Defendant, Linda Mack, and their coconspirators knowingly and intentionally concealed from lenders the identities of the recipients of these disbursements and the true purpose of the disbursements, when Defendant, Linda Mack, and their coconspirators then and there well knew that the representations made to lenders were false and fraudulent.

d. Defendant, Linda Mack, and their coconspirators caused buyers to apply for mortgage loans from lenders to purchase properties. Through these transactions, Defendant, Linda Mack, and their coconspirators obtained money from lenders by causing money from the mortgage loans to be paid to the conspirators in the form of commissions and fees.

1 e. Defendant, Linda Mack, and their coconspirators caused buyers' loan
2 applications and supporting documentation to contain materially false and fraudulent
3 representations about buyers' qualifications, including but not limited to one or more of the
4 following: the buyers' income and intended occupancy status, when Defendant, Linda Mack,
5 and their coconspirators then and there well knew that the representations were false and
6 fraudulent.

7 f. Defendant and his coconspirators caused lenders and escrow companies
8 to transmit money and documents by means of U.S. mail, interstate commercial carriers, and
9 interstate wire communications to complete the transactions.

10 g. Defendant and his coconspirators defaulted on the mortgage loans which
11 caused the properties to go into foreclosure.

12 h. Some of the lenders, including Pacific Mercantile Bank, were federally
13 insured.

14 i. Defendant's conspiracy to violate Title 18, United States Code, Sections
15 1341 and 1343 affected at least one federally insured financial institution.

16 4. From on or about November 17, 2004, to on or about December 15, 2004, in the
17 State and Federal District of Nevada, for the purpose of executing and attempting to execute the
18 scheme to defraud and to obtain money and property, Defendant, Linda Mack, and their
19 coconspirators did knowingly cause to be submitted to Pacific Mercantile Bank, a federally
20 insured financial institution, loan applications and supporting documents containing materially
21 false and fraudulent pretenses, representations and promises in order to cause Pacific Mercantile
22 Bank to loan money to fund the purchase of 7800 License St., Las Vegas, Nevada.

23 5. As a result of this fraud, the lenders suffered an aggregate loss of more than
24 \$9,500,000.00.

1 6. In all of the aforementioned actions Daryll Reese acted with the intent to
2 defraud. Daryll Reese was a licensed real estate agent and a licensed loan officer for the Phelps.
3 His primary duties were on the real estate side. He prepared offers and addendums setting forth
4 the kickbacks to buyers. He also prepared fraudulent leases to support the buyers' fraudulent
5 occupancy representations. Daryll Reese would prepare a different lease agreement for each
6 purchase made by a single buyer. The renter's name would often be different, and the address
7 to which the renter would send the rent check would always be the property subject to the
8 receiving lender's loan. The lease agreements were submitted to lenders to show that the buyer
9 was moving out of his current residence and to support the false representation that the buyer
10 intended to occupy the newly purchased house as a primary residence. Reese also signed
11 fraudulent loan applications as a loan officer.

12 7. The defendant admits that the in personam criminal forfeiture money judgment
13 amount listed in Section X is (1) any property, real or personal, which constitutes or is derived
14 from proceeds traceable to violations of Title 18, United States Code, Sections 1341, 1343, and
15 1344, specified unlawful activities as defined in Title 18, United States Code, Sections
16 1956(c)(7)(A) and 1961(1)(B), or Title 18, United States Code, Section 1349, conspiracy to
17 commit such offense and (2) any property constituting, or derived from, proceeds obtained
18 directly or indirectly, as the result of violations of Title 18, United States Code, Sections 1341,
19 1343, and 1344, or Title 18, United States Code, Section 1349, conspiracy to violate such
20 offenses, and is subject to forfeiture pursuant to Title 18, United States Code, Section
21 981(a)(1)(C) with Title 28, United Code, Section 2461(c); Title 18, United States Code, Section
22 982(a)(2)(A); and Title 21, United States Code, Section 853(p).

23 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**
24

The facts set forth in Section IV of this Plea Agreement shall be admissible against the defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the Defendant does not plead guilty or withdraws his guilty plea, the facts set forth in Section IV of this Plea Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting any evidence, argument or representation offered by or on the defendant's behalf. The defendant expressly waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the use of the facts set forth in Section IV of this Plea Agreement.

VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS

A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges that the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines") in determining the defendant's sentence, but that the Sentencing Guidelines are advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the maximum term of imprisonment permitted by statute.

B. Offense Level Calculations. The parties stipulate to the following calculation of the Defendant's offense level under the Sentencing Guidelines, acknowledge that these stipulations do not bind the Court:

Base Offense Level (USSG § 2B1.1):	7
Loss Amount: \$9,500,000 - \$25,000,000 (USSG § 2B1.1(b)(1)(K)):	20
Reduction for Acceptance of Responsibility (USSG § 3E1.1)	(3)
Total	24

The defendant acknowledges that the statutory maximum sentence and any statutory minimum sentence limit the Court's discretion in determining the defendant's sentence notwithstanding any applicable Sentencing Guidelines provisions.

1 C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG
2 § 3E1.1(a), the United States will recommend that the defendant receive a two-level downward
3 adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts
4 establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully
5 admit facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails
6 to truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d)
7 provides false or misleading information to the United States, the Court, Pretrial Services, or the
8 Probation Office; (e) denies involvement in the offense or provides conflicting statements
9 regarding his involvement or falsely denies or frivolously contests conduct relevant to the
10 offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime;
11 (h) fails to appear in court; or (i) violates the conditions of pretrial release.

12 Under USSG § 3E1.1(b), the United States will move for an additional one-level
13 downward adjustment for acceptance of responsibility before sentencing because the defendant
14 communicated his decision to plead guilty in a timely manner that enabled the United States to
15 avoid preparing for trial and to efficiently allocate its resources.

16 D. Criminal History Category. The defendant acknowledges that the Court may
17 base his sentence in part on the defendant's criminal record or criminal history. The Court will
18 determine the defendant's Criminal History Category under the Sentencing Guidelines.

19 E. Relevant Conduct. The Court may consider all relevant conduct, whether
20 charged or uncharged, in determining the applicable Sentencing Guidelines range and whether
21 to depart from that range.

22 F. Additional Sentencing Information. The stipulated Sentencing Guidelines
23 calculations are based on information now known to the parties. The parties may provide
24 additional information to the United States Probation Office and the Court regarding the nature,

1 scope, and extent of the defendant's criminal conduct and any aggravating or mitigating facts or
2 circumstances. Good faith efforts to provide truthful information or to correct factual
3 misstatements shall not be grounds for the defendant to withdraw his guilty plea.

4 The defendant acknowledges that the United States Probation Office may calculate the
5 Sentencing Guidelines differently and may rely on additional information it obtains through its
6 investigation. The defendant also acknowledges that the Court may rely on this and other
7 additional information as it calculates the Sentencing Guidelines range and makes other
8 sentencing determinations, and the Court's reliance on such information shall not be grounds for
9 the defendant to withdraw his guilty plea.

10 **VII. APPLICATION OF SENTENCING STATUTES**

11 A. Maximum Penalty. The maximum penalty for conspiracy under 18 U.S.C.
12 § 1349 is a thirty-year prison sentence, a fine of \$1,000,000, or both. The maximum penalty for
13 bank fraud under 18 U.S.C. § 1344 is a thirty-year prison sentence, a fine of \$1,000,000, or
14 both.

15 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in
16 18 U.S.C. § 3553(a) in determining the defendant's sentence. However, the statutory maximum
17 sentence and any statutory minimum sentence limit the Court's discretion in determining the
18 defendant's sentence.

19 C. Parole Abolished. The defendant acknowledges that his prison sentence cannot
20 be shortened by early release on parole because parole has been abolished.

21 D. Supervised Release. In addition to imprisonment and a fine, the defendant will
22 be subject to a term of supervised release not greater than five years. 18 U.S.C. § 3583(b)(1).
23 Supervised release is a period of time after release from prison during which the defendant will
24 be subject to various restrictions and requirements. If the defendant violates any condition of

1 supervised release, the Court may order the defendant's return to prison for all or part of the
2 term of supervised release, which could result in the defendant serving a total term of
3 imprisonment greater than the statutory maximum prison sentence of 30 years.

4 E. Special Assessment. The defendant will pay a \$100.00 special assessment per
5 count at the time of sentencing.

6 ...

7 **VIII. POSITIONS REGARDING SENTENCE**

8 The parties agree and stipulate to a downward departure pursuant to U.S.S.G.
9 §5K2.0(a)(1)(A); or, a downward variance pursuant to 18 U.S.C. §3553(a) and (b), to the extent
10 required to achieve a guideline offense level of 16. The downward departure is based on the
11 fact that the Defendant's role in the overall scheme was more limited than that of other
12 conspirators. It is also based on the fact that the Defendant received little personal gain relative
13 to the total loss amount of the conspiracy. Further the downward variance is based on the need
14 for the sentence to 1) reflect the seriousness of the offense and to provide just punishment for
15 the offense; 2) afford adequate deterrence to criminal conduct; and 3) protect the public from
16 further crimes of the Defendant. The parties agree that the downward departure is reasonable
17 and sufficient, but not greater than necessary to achieve the goals of sentencing.

18 The United States may also file a motion for an additional downward departure pursuant
19 to U.S.S.G. § 5K1.1 as described in Section X below.

20 The United States may argue for any sentence within the Sentencing Guidelines range
21 corresponding to the offense level agreed upon by the parties above or any sentence within a
22 lower Sentencing Guidelines range that may result if a motion for an additional downward
23 departure pursuant to U.S.S.G. § 5K1.1 is filed. The United States will be exempt from these
24

1 limitations if the defendant commits any act that could result in a loss of the downward
2 adjustment for acceptance of responsibility.

3 The defendant will not request a sentence below the Sentencing Guidelines range as
4 calculated in this Plea Agreement, and will not seek a downward adjustment pursuant to 18
5 U.S.C. § 3553 or USSG § 4A1.3(b)(1) from any sentence the Court may impose.

6 The defendant acknowledges that the Court does not have to grant a downward
7 departure based on U.S.S.G. § 5K2.0(a)(1)(A) or based on the defendant's substantial assistance
8 to the United States, even if the United States chooses to file a motion pursuant to 18 U.S.C. §
9 3553(e)(1), U.S.S.G. § 5K1.1, or Fed. R. Crim. P. 35. This Plea Agreement does not require the
10 United States to file any pre- or post-sentence downward departure motion under U.S.S.G. §
11 5K1.1 or Fed. R. Crim. P. 35. Notwithstanding the agreement to recommend a sentence within
12 the Sentencing Guidelines range corresponding to the offense level calculated in this Plea
13 Agreement, the United States reserves its right to defend any lawfully imposed sentence on
14 appeal or in any post-conviction litigation.

15 **IX. RESTITUTION**

16 In exchange for benefits received under this Plea Agreement, the defendant agrees to
17 make restitution in the amount of \$20,127,450 to lenders and other entities to be determined at
18 sentencing. The defendant cannot discharge his restitution obligation through bankruptcy
19 proceedings. The defendant acknowledges that restitution payments and obligations cannot
20 offset or reduce the amount of any forfeiture judgment imposed in this case.

21 **X. FORFEITURE**

22 The defendant knowingly and voluntarily:

23 A. Agrees to the District Court imposing an in personam criminal forfeiture money
24 judgment of \$399,988.18 not to be held jointly and severally liable with any codefendants;

1 B. Waives his right to any abandonment proceedings, any civil administrative
2 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
3 proceedings of the in personam criminal forfeiture money judgment (proceedings);

4 C. Waives service of process of any and all documents filed in this action or any
5 proceedings concerning the in personam criminal forfeiture money judgment arising from the
6 facts and circumstances of this case;

7 D. Agrees not to file any claim, answer, petition, or other documents in any
8 proceedings concerning the in personam criminal forfeiture money judgment;

9 E. Waives the statute of limitations, the CAFRA requirements, Fed. R. Crim. P. 7,
10 11, and 32.2, all constitutional requirements, including, but not limited to, the constitutional due
11 process requirements of any proceedings concerning the in personam criminal forfeiture money
12 judgment;

13 F. Waives all constitutional, legal, and equitable defenses to the in personam
14 criminal forfeiture money judgment in any proceedings, including, but not limited to, (1)
15 constitutional or statutory double jeopardy defenses and (2) defenses under the Excessive Fines
16 or Cruel and Unusual Punishments Clauses of the Eighth Amendment to the United States
17 Constitution;

18 G. Agrees to the entry of an Order of Forfeiture for the in personam criminal
19 forfeiture money judgment to the United States;

20 H. Waives the right to appeal any Order of Forfeiture;

21 I. Agrees that the in personam criminal forfeiture money judgment is immediately
22 due and payable and is subject to immediate collection by the United States;

1 J. Agrees and understands the in personam criminal forfeiture money judgment shall
2 not be treated as satisfaction of any assessment, fine, restitution, cost of imprisonment, or any
3 other penalty the Court may impose upon the defendant in addition to the forfeiture;

4 K. Acknowledges that the amount of the forfeiture may differ from, and may be
5 significantly greater than or less than, the amount of restitution; and

6 L. Agrees to take all steps as requested by the United States to pass clear title of any
7 forfeitable assets which may be used to satisfy the in personam criminal forfeiture money
8 judgment to the United States and to testify truthfully in any judicial forfeiture proceedings. The
9 defendant understands and agrees that the in personam criminal forfeiture money judgment
10 amount represents proceeds and/or facilitating property of illegal conduct and is forfeitable. The
11 defendant acknowledges that failing to cooperate in full in the disclosure of assets constitutes a
12 breach of this Plea Agreement.

13 **XI. COOPERATION**

14 The defendant agrees, if requested by the United States, to provide complete and truthful
15 information and testimony concerning the defendant's knowledge of all other persons who are
16 committing or have committed offenses against the United States or any state, and agrees to
17 cooperate fully with the United States and any state and local agencies in the investigation and
18 prosecution of such persons. The defendant agrees that the information provided can be used
19 against the defendant to establish relevant conduct for sentencing purposes.

20 In the event the United States Attorney decides in the sole discretion of the United States
21 Attorney that the assistance provided by the defendant amounts to "substantial assistance"
22 pursuant to USSG § 5K1.1, the United States will timely file a motion for downward departure
23 from the applicable Guideline calculation. The Court has the sole discretion to grant such a
24 motion.

1 The defendant agrees that a motion for downward departure based on substantial
2 assistance shall not be made under any circumstances unless the defendant's cooperation is
3 deemed to be substantial assistance by the United States Attorney. The United States has made
4 no promise, implied or otherwise, that the defendant will be granted a departure for substantial
5 assistance. Further, no promise has been made that such a motion will be made even if the
6 defendant complies with the terms of this Plea Agreement in all respects but has been unable to
7 provide substantial assistance as determined in the sole discretion of the United States Attorney.

8 The United States agrees to consider the totality of the circumstances, including but not
9 limited to, the following factors, in determining whether, in the sole discretion of the United
10 States Attorney, the defendant has provided substantial assistance which would merit a motion
11 by the United States for a downward departure from the applicable Guideline:

12 A. The United States' evaluation of the significance and usefulness of the
13 defendant's assistance;

14 B. The truthfulness, completeness, and reliability of any information or
15 testimony provided by the defendant;

16 C. The nature and extent of the defendant's assistance;

17 D. Any injury suffered, or any danger or risk of injury to the defendant or
18 the defendant's family resulting from the defendant's assistance; and

19 E. The timeliness of the defendant's assistance.

20 The defendant agrees that in the event the United States files a downward departure
21 motion based upon the defendant's substantial assistance, the United States reserves the right to
22 make a specific recommendation to the Court regarding the extent of such a departure. The
23 defendant understands and agrees that the final decision as to how much of a departure, if any,
24 is warranted rests solely with the Court.

1 The defendant agrees that if the United States determines that the defendant has not
 2 provided full and truthful cooperation, or has committed any federal, state or local crime
 3 between the date of this agreement and the defendant's sentencing, or has otherwise violated
 4 any provision of this agreement, then (a) the agreement and any of its obligations hereunder
 5 may be voided by the United States in its sole discretion, (b) the defendant may not withdraw
 6 the guilty plea, and (c) the defendant shall be subject to prosecution for all federal criminal
 7 offenses of which the United States has knowledge, including but not limited to, perjury and
 8 obstruction of justice. Any such prosecution may be based upon any information provided by
 9 the defendant or leads derived therefrom.

10 **XII. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

11 Before or after sentencing, upon request by the Court, the United States, or the Probation
 12 Office, the defendant will provide accurate and complete financial information, submit sworn
 13 statements, and/or give depositions under oath concerning his assets and his ability to pay. The
 14 defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and
 15 will release funds and property under his control in order to pay any fine, forfeiture, or
 16 restitution ordered by the Court.

17 **XIII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

18 A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges
 19 that:

- 20 1. He has read this Plea Agreement and understands its terms and
 21 conditions;
- 22 2. He has had adequate time to discuss this case, the evidence, and this Plea
 23 Agreement with his attorney;
- 24 3. He has discussed the terms of this Plea Agreement with his attorney;

1 4. The representations contained in this Plea Agreement are true and
2 correct, including the facts set forth in Section IV; and

3 5. He was not under the influence of any alcohol, drug, or medicine that
4 would impair his ability to understand the Agreement when he considered signing this Plea
5 Agreement and when he signed it.

6 The defendant understands that he alone decides whether to plead guilty or go to trial,
7 and acknowledges that he has decided to enter his guilty plea knowing of the charges brought
8 against him, his possible defenses, and the benefits and possible detriments of proceeding to
9 trial. The defendant also acknowledges that he decided to plead guilty voluntarily and that no
10 one coerced or threatened him to enter into this Plea Agreement.

11 B. Waiver of Appeal and Post-Conviction Proceedings. The defendant knowingly
12 and expressly waives: (a) the right to appeal any sentence imposed within or below the
13 applicable Sentencing Guideline range as determined by the Court; (b) the right to appeal the
14 manner in which the Court determined that sentence on the grounds set forth in 18 U.S.C.
15 § 3742; and (c) the right to appeal any other aspect of the conviction or sentence and any order
16 of restitution or forfeiture.

17 The defendant also knowingly and expressly waives all collateral challenges, including
18 any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the
19 Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective
20 assistance of counsel.

21 The defendant reserves only the right to appeal any portion of the sentence that is an
22 upward departure from the Sentencing Guidelines range determined by the Court.

23 The defendant acknowledges that the United States is not obligated or required to
24 preserve any evidence obtained in the investigation of this case.

1 C. Removal/Deportation Consequences. The defendant understands and
2 acknowledges that if he is not a United States citizen, then it is highly probable that he will be
3 permanently removed (deported) from the United States as a consequence of pleading guilty
4 under the terms of this Plea Agreement. The defendant has also been advised if his conviction
5 is for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the
6 United States and will not be allowed to return to the United States at any time in the future.
7 The defendant desires to plead guilty regardless of any immigration consequences that may
8 result from his guilty plea, even if the consequence is automatic removal from the United States
9 with no possibility of returning. The defendant acknowledges that he has specifically discussed
10 these removal/deportation consequences with his attorney.

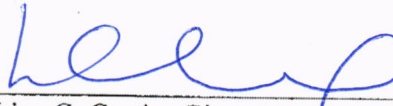
11 **XIV. ADDITIONAL ACKNOWLEDGMENTS**

12 This Plea Agreement resulted from an arms-length negotiation in which both parties
13 bargained for and received valuable benefits in exchange for valuable concessions. It
14 constitutes the entire agreement negotiated and agreed to by the parties. No promises,
15 agreements or conditions other than those set forth in this agreement have been made or implied
16 by the defendant, the defendant's attorney, or the United States, and no additional promises,
17 agreements or conditions shall have any force or effect unless set forth in writing and signed by
18 all parties or confirmed on the record before the Court.

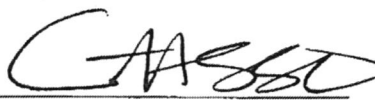
19 DANIEL G. BOGDEN,
20 United States Attorney

21 DATE

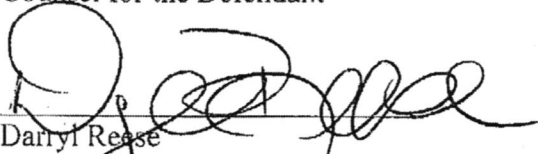
7-20-16


22 Lisa C. Cartier Giroux
23 Assistant United States Attorney
24 Kyle Maurer
Trial Attorney

1 DATE 7/20/16


Gabriel L. Grasso
Counsel for the Defendant

2
3
4 DATE 7/15/2016


Darryl Reese
Defendant