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6 Attorneys for the  
7 United States of America

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

11 UNITED STATES OF AMERICA, ) 01: 11-CR-00149 AWI  
12 )  
13 Plaintiff, ) MEMORANDUM OF PLEA AGREEMENT  
14 v. ) PURSUANT TO RULE 11(c) OF  
15 ) THE FEDERAL RULES OF  
16 ) CRIMINAL PROCEDURE  
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Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, the United States of America, by and through Benjamin B. Wagner, the United States Attorney for the Eastern District of California, and Assistant United States Attorney Grant B. Rabenn, and Defendant, Monica Nanette Hernandez, and her attorney, Carol Moses, have agreed as follows.

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

9 1. Charges.

10 The defendant acknowledges that she has been charged in a  
11 ten count indictment as follows:

12 Making and Subscribing a False Income Tax Return, in  
13 violation of Title 26, United States Code, Section 7206(1) (3  
14 Counts);

15 Wire Fraud, in violation of Title 18, United States Code,  
16 Section 1343 (6 Counts); and

17 Aggravated Identity Theft in violation of Title 18,  
18 United States Code, Section 1028A(a)(1) and (c)(5).

19 2. Nature, Elements and Possible Defenses.

20 The defendant has read the charges against her contained  
21 in the indictment, and those charges have been fully explained  
22 to her by her attorney. Further, the defendant fully  
23 understands the nature and elements of the crimes in Counts  
24

1 Three, Four and Ten of the indictment to which she is pleading  
2 guilty, together with the possible defenses thereto, and has  
3 discussed them with her attorney.

4 Count Three-Making and Subscribing a False Income Tax  
5 Return:

6 The elements of the crime of Making and Subscribing a  
7 False Income Tax Return are:

8 First, the defendant made and signed a tax return for  
9 the year 2008 that she knew contained false  
information as to a material matter;

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

12 Third, in filing the false tax return, the defendant  
13 acted willfully.

14 Count Four- Wire Fraud:

15 The elements of the crime of Wire Fraud are:

16 First, the defendant made up a scheme to defraud or  
17 plan for obtaining money or property by false or  
fraudulent pretenses, representations or  
promises;

18 Second, the scheme to defraud or plan for obtaining  
19 money or property by false and fraudulent  
pretenses, representations or promises was  
20 material;

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

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

1 and

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

3 Count Ten- Aggravated Identity Theft:

4 The elements of the crime of Wire Fraud are:

5 First, the defendant knowing by used without lawful  
6 authority a means of identification of another  
7 person;

8 Second, the defendant's use had an affect on interstate  
9 commerce; and

10 Third, the defendant committed such conduct occurred  
11 during and in relation to a felony, to wit:  
12 access device fraud, wire fraud and bank fraud  
13 in violation of Title 18, United States Code,  
14 Section 1343.

15 3. Agreements by the Defendant.

16 (a) Defendant agrees that this plea agreement shall be  
17 filed with the court and become a part of the record of the  
18 case.  
19

20 (b) Defendant agrees to enter a plea of guilty to Count  
21 Three of the indictment which charges her with Making and  
22 Subscribing a False Income Tax Return, in violation of Title  
23 26, United States Code, Section 7206(1); Count Four with Wire  
24 Fraud, in violation of Title 18, United States Code, Section  
25 1343; and Count Ten with Aggravated Identity Theft, in  
violation of Title 18, United States Code, Section 1028A(a) (1)  
and (c) (5).

1 (c) Defendant understands and agrees that she will not  
2 be allowed to withdraw her plea should the Court fail to  
3 follow the government's sentencing recommendations.

4 (d) Defendant knowingly and voluntarily waives her  
5 Constitutional and statutory rights to appeal her plea, order  
6 of restitution, conviction and sentence. This waiver of  
7 appeal includes, but is not limited to, an express waiver of  
8 defendant's right to appeal her plea, conviction, order of  
9 restitution and sentence on any ground, including any appeal  
10 right conferred by 18 U.S.C. § 3742, and defendant further  
11 agrees not to contest her plea, conviction, order of  
12 restitution and sentence in any post-conviction proceeding,  
13 including but not limited to a proceeding under 28 U.S.C. §  
14 2255.  
15

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

21 (f) Defendant agrees that her base offense level for  
22 filing a false tax return is sixteen (16) pursuant to Sections  
23 2T1.1(a)(1) and 2T4.1(F) of the United States Sentencing  
24 Commission Guidelines Manual for a tax loss of more than  
25

1 \$80,000 but less than \$200,000 and that this guideline section  
2 applies consecutively to the mandatory minimum sentence of  
3 twenty-four (24) months imprisonment for Aggravated Identity  
4 Theft under Count Ten.

5 (g) Defendant agrees that her base offense level for  
6 Wire Fraud is seven (7) pursuant to Section 2B1.1(a)(1)(B) of  
7 the United States Sentencing Commission Guidelines Manual,  
8 plus at least a loss ten (10) levels for a loss of at least  
9 \$120,000 (§ 2B1.1(b)(1)(f)) and that this guideline section  
10 applies consecutively to the mandatory minimum sentence of  
11 twenty-four (24) months imprisonment for Aggravated Identity  
12 Theft under Count Ten.

13 (h) Defendant agrees to waive all rights under the "Hyde  
14 Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to  
15 recover attorneys' fees or other litigation expenses in  
16 connection with the investigation and prosecution of all  
17 charges in the above-captioned matter and of any related  
18 allegations (including without limitation any charges to be  
19 dismissed pursuant to this Agreement and any charges  
20 previously dismissed).

21 (i) Defendant agrees to pay restitution to the United  
22 States pursuant to Title 18, United States Code, Section  
23 3663(a)(3) and in an amount of approximately \$200,000 and  
24

1 agrees that the conduct under Count Four is governed by the  
2 Mandatory Restitution Act pursuant to 18 U.S.C. §  
3 3663A(c)(1)(A)(ii) and agrees to pay the full amount of  
4 restitution as ordered by the court to all victims affected by  
5 this offense, including but not limited to the victims covered  
6 in the factual basis, victims covered in those counts to be  
7 dismissed as part of the plea agreement pursuant to 18 U.S.C.  
8 § 3663A(a)(3) and other victims as a result of the defendant's  
9 conduct for the offenses charged from the periods of February  
10 2010 through June 2010 and in an amount determined by the  
11 court at sentencing.

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

24 (k) The defendant understands that the Court must  
25

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

21 4. Agreements by the Government.

22 (a) The government will recommend a two-level reduction  
23 (if the offense level is less than 16) or a three-level  
24 reduction (if the offense level reaches 16) in the computation  
25

1 of her offense level if the defendant clearly demonstrates  
2 acceptance of responsibility for her conduct as defined in  
3 Section 3E1.1 of the United States Sentencing Commission  
4 Guidelines Manual.

5 (b) The government agrees that the Defendant's base  
6 offense level for filing a false tax return is sixteen (16)  
7 pursuant to Sections 2T1.1(a)(1) and 2T4.1(F) of the United  
8 States Sentencing Commission Guidelines Manual for a tax loss  
9 of more than \$80,000 but less than \$200,000 and that this  
10 guideline section applies consecutively to the mandatory  
11 minimum sentence of twenty-four (24) months imprisonment for  
12 Aggravated Identity Theft under Count Ten.

13 (c) The government agrees that the Defendant's base  
14 offense level for Wire Fraud is seven (7) pursuant to Section  
15 2B1.1(a)(1)(B) of the United States Sentencing Commission  
16 Guidelines Manual, plus no more than sixteen (16) levels for a  
17 loss of at least \$1,000,000 but no more than \$2,500,000 (\$  
18 2B1.1(b)(1)(I)) and that this guideline section applies  
19 consecutively to the mandatory minimum sentence of twenty-four  
20 (24) months imprisonment for Aggravated Identity Theft under  
21 Count Ten.

22 (d) To the extent such a recommendation is consistent  
23 with the United States Sentencing Guidelines, the government  
24

1 will recommend that Count Four run concurrent to Count Three.

2 (e) The defendant acknowledges and understands that the  
3 government makes no other representations to her regarding her  
4 sentence, fines, whether any other specific offense  
5 characteristics apply to her conduct, the restitution owed,  
6 her criminal history or criminal history points under Chapter  
7 Four or whether additional enhancements or reductions under  
8 Chapter Three or Five of the United States Sentencing  
9 Guidelines apply and defendant understands that the government  
10 is free to comment and to make recommendations to the court  
11 and the probation office regarding those matters.

12 (f) The government agrees to dismiss the remaining  
13 counts of the indictment at the time of sentencing.

14 5. Factual Basis.

15 Defendant will plead guilty because she is in fact guilty  
16 of the crimes set forth in Counts Three, Four and Ten of the  
17 indictment. Defendant also agrees that the following are the  
18 facts of this case, although she acknowledges that, as to  
19 other facts, the parties may disagree:

20 Count Three:

21 On or about April 15, 2009, within the State and Eastern  
22 District of California, the defendant did willfully make  
23 and subscribe to her 2008 1040 tax return, which return  
24 contained a written declaration that it was made under  
25 penalty of perjury and filed with the Internal Revenue  
Service at Fresno, California, which income tax forms the

1 defendant did not believe to be true and correct as to  
2 material matters. The tax return claimed materially  
3 false assertions, including but not limited to, claiming  
4 excess withholdings for which the defendant was not  
5 entitled to, and therefore allowed the defendant to  
6 receive refunds for which she was not entitled to in the  
7 amounts requested. The defendant knew that such entries  
8 were not true and correct as to material matters.

6 At all relevant times herein, defendant Monica Nanette  
7 Hernandez was an employee of the Internal Revenue Service  
8 ("IRS") at the IRS' Fresno Service Center located in  
9 Fresno, California, State and Eastern District of  
10 California. The defendant was employed by the IRS as a  
11 part-time data entry clerk. As part of her duties, the  
12 defendant inputted taxpayer's tax information into the  
13 IRS' computer system. In the course of her duties, the  
14 defendant regularly handled and processed tax returns on  
15 behalf of the IRS.

11 During the course of her employment with the IRS, the  
12 defendant stole and/or misappropriated tax information of  
13 other taxpayers, including but not limited to, Form 1099-  
14 B's issued by other entities and maintained at the IRS on  
15 behalf of particular taxpayers. A Form 1099-B is an IRS  
16 form which lists a taxpayer's income received and  
17 withholdings withheld from interest and dividend  
18 earnings.

16 Using the improperly acquired 1099's, the defendant then  
17 falsified and forged 1099's to reflect her personal  
18 information. The false 1099-B forms would list dividends  
19 and/or interest income received by the defendant and  
20 large withholdings to which she was not entitled. Using  
21 the falsified and forged 1099's as support, the defendant  
22 then filed or caused to be filed her own personal tax  
23 returns claiming the fraudulent information provided on  
24 the forged and fraudulent 1099, specifically, claiming  
25 the excessive withholdings. In most cases, the defendant  
did not submit the forged and falsified 1099 with her tax  
returns. By claiming the false excessive withholdings,  
the defendant was able to obtain large tax refunds. The  
defendant also filed or caused to be false tax returns  
for taxable years 2006 (amended) and 2007. As a result  
of her fraud, the defendant was able to obtain refunds  
from the IRS in the amount of \$175,144.

1        Count Four:

2        Beginning at a time unknown but no later than in or about  
3        February 2010, and continuing to in or about June 2010,  
4        in the State and Eastern District of California and  
5        elsewhere, the defendant devised and intended to devise a  
6        scheme and artifice to defraud the Internal Revenue  
7        Service and United States of money and property, and to  
8        obtain money and property from Internal Revenue Service  
9        and United States by means of materially false and  
10       fraudulent pretenses, representations and promises, as  
11       more fully set forth below.

12       During the above-described time period, the defendant  
13       executed the scheme and artifice to defraud by the  
14       following manner and means:

15       Starting in or around February 2010, the defendant began  
16       to file a new series of fraudulent tax returns, similar  
17       in means to the fraudulent returns she had filed for  
18       herself for taxable years 2006, 2007 and 2008, as  
19       described in Count Three, above: namely, falsely claiming  
20       excessive withholdings. However, this time she used  
21       other individuals' personal information, rather than her  
22       own, to obtain the large refunds.

23       In order to perpetrate this scheme, the defendant  
24       acquired the means of identification, including but not  
25       limited to names, social security numbers and other  
26       pertinent personal information, of other individuals from  
27       sites located on the Internet. Using these means of  
28       identification, the defendant then prepared and filed  
29       false tax returns with the IRS claiming excessive  
30       withholdings and requesting a large refund. Some of  
31       these taxpayers whose identities the defendant used to  
32       file the false tax returns were deceased at the time the  
33       returns were filed.

34       In addition, the defendant filed a false tax return using  
35       a relative's means of identification and prepared the  
36       false return again claiming excessive withholding  
37       relating to false interest and dividend income. The  
38       defendant also opened up a bank account in the relative's  
39       name in order to eventually deposit the refund check  
40       obtained from the false return.

1 Also, in or about April 2010, the defendant illegally  
2 acquired and removed from the Internal Revenue Service  
3 Center in Fresno, California, sixty-eight (68) separate  
4 tax returns of taxpayers, not in the name of the  
5 defendant. These tax returns had been received by the  
6 IRS but had not yet been entered into the IRS' computer  
7 system. The stolen tax returns contained means of  
8 identification of other individuals, individuals who had  
9 not given the defendant permission to obtain, possess  
10 and/or use their means of identification. These means of  
11 identification included, but were not limited to, names,  
12 social security numbers, addresses and other pertinent  
13 data associated with the taxpayer. After illegally  
14 removing these tax returns from the IRS, the defendant  
15 then proceeded to file fraudulent tax returns for her  
16 benefit by using the means of identification of some of  
17 these taxpayers. Again, and in order to increase the  
18 amount of refunds the defendant could get, she filed  
19 fraudulent tax returns claiming excessive withholdings  
20 from dividends and interest income. The defendant  
21 electronically filed the fraudulent tax returns from  
22 Fresno, California to IRS locations throughout the United  
23 States, including but not limited to, Kansas City,  
24 Missouri and Austin, Texas. Any refunds generated from  
25 these fraudulent returns were generated outside of  
California and transferred across state lines, including  
through New Jersey, and eventually back to California.

16 On or about February 12, 2010, in the Eastern District of  
17 California, and elsewhere, for the purpose of carrying  
18 out the aforementioned scheme and artifice to defraud,  
19 defendant sent and/or caused to be sent a sign, signal;  
20 to wit, tax return electronically filed by the defendant  
21 from Fresno, California to Kansas City, Missouri in the  
22 name of L.O. which was transmitted by means of wire  
23 communications in interstate and foreign commerce.

21 At all relevant times herein, the defendant acted with  
22 the intent to defraud and filed approximately ten tax  
23 returns in which she attempted to claim refunds of  
24 \$1,745,013.00.

23 Count Ten:

24 Beginning at a time unknown to the grand jury but no  
25 later than February 2010 to June 15, 2010, within the

1 State and Eastern District of California, the defendant  
2 possessed and/or used without lawful authority a means of  
3 identification of another person and persons, including  
4 but not limited to names and/or social security numbers,  
5 addresses, with the intent to commit an unlawful activity  
6 that constitutes a violation of federal law: to wit, wire  
7 fraud in violation of 18 U.S.C. § 1343, as set forth in  
8 Count Three, above. The defendant knew that the means of  
9 identification belonged to another person.

6. Potential Sentence.

7 The following is the maximum potential sentence which  
8 defendant faces as to each count:

9 **Count Three- Making and Subscribing a False Income Tax**  
10 **Return:**

11 (a) Imprisonment.

12 Maximum: Three (3) years.

13 (b) Fine.

14 Maximum: Two Hundred and Fifty Thousand  
15 (\$250,000.00).

16 (c) Both such fine and imprisonment.

17 (d) Restitution

18 (e) Term of Supervised Release:

19 Maximum: One (1) year.

20 (Should the defendant violate any of the terms of  
21 her supervised release, she can be returned to  
22 prison for the period of supervised release actually  
23 imposed by the Court or one (1) year, whichever is  
24 less.)

1 (f) Penalty Assessment.

2 Mandatory: Fifty (\$50.00).

3 **Count Four- Wire Fraud:**

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  
14 her supervised release, she can be returned to  
15 prison for the period of supervised release actually  
imposed by the Court or two (2) years, whichever is  
less.)

16 (f) Penalty Assessment.

17 Mandatory: One Hundred dollars (\$100.00).

18 **Count Ten- Aggravated Identity Theft:**

19 (a) Imprisonment.

20 Mandatory Minimum: Two (2) years.

21 **Plus guideline range on Count One which runs**  
22 **consecutive to two (2) year mandatory minimum**

23 Maximum: Fifteen (15) years.

1 (b) Fine.

2 Maximum: Two Hundred and Fifty Thousand dollars  
3 (\$250,000.00).

4 (c) Both such fine and imprisonment.

5 (d) Restitution- Mandatory

6 (e) Term of Supervised Release:

7 Maximum: Three (3) years.

8 (Should the defendant violate any of the terms of  
9 her supervised release, she can be returned to  
10 prison for the period of supervised release actually  
11 imposed by the Court or two (2) years, whichever is  
12 less.)

11 (f) Penalty Assessment.

12 Mandatory: One Hundred dollars (\$100.00).

13 7. Waiver of Rights.

14 Defendant understands that by pleading guilty she  
15 surrenders certain rights, including the following:

16 (a) If defendant persisted in a plea of not guilty to  
17 the charges against her, she would have the right to be  
18 represented by an attorney at all stages of the proceedings,  
19 and would have a right to a public and speedy trial. The  
20 trial could be either a jury trial or a trial by a judge  
21 sitting without a jury. Defendant has a right to a jury  
22 trial. However, in order that the trial be conducted by the  
23 judge sitting without a jury, defendant, the government and  
24

1 the judge all must agree that the trial be conducted by the  
2 judge without a jury.

3 (b) If the trial were a jury trial, the jury would be  
4 composed of twelve lay persons selected at random. Defendant  
5 and her attorney would have a say in who the jurors would be  
6 by removing prospective jurors for cause where actual bias or  
7 other disqualification is shown, or without cause by  
8 exercising peremptory challenges. The jury would have to  
9 agree unanimously before it could return a verdict of either  
10 guilty or not guilty. The jury would be instructed that  
11 defendant is presumed innocent and that it could not convict  
12 her unless, after hearing all the evidence, it was persuaded  
13 of her guilt beyond a reasonable doubt.  
14

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

19 (d) At a trial, whether by a jury or a judge, the  
20 government would be required to present its witnesses and  
21 other evidence against defendant. Defendant would be able to  
22 confront those government witnesses and her attorney would be  
23 able to cross-examine them. In turn, defendant could present  
24 witnesses and other evidence on her own behalf. If the  
25

1 witnesses for defendant would not appear voluntarily, she  
2 could require their attendance through the subpoena power of  
3 the Court. At trial, the defendant would also have the right  
4 to assistance of legal counsel. If she could not afford legal  
5 counsel, one would be appointed for her by the court at no  
6 expense to her.

7 (e) At a trial, defendant would have a privilege against  
8 self-incrimination so that she could decline to testify,  
9 and no inference of guilt could be drawn from this refusal to  
10 testify.

11 Defendant understands that by pleading guilty she is  
12 waiving all of the rights set forth above and defendant's  
13 attorney has explained those rights to her and the  
14 consequences of her waiver of those rights.  
15

16 8. Questions by Court.

17 Defendant understands that if the court questions her  
18 under oath, on the record and in the presence of counsel,  
19 about the offense to which she has pleaded guilty, her  
20 answers, if false, may later be used against her in a  
21 prosecution for perjury.

22 ///

23 ///

24 ///

1           9.    Entire Agreement.

2           This plea of guilty is freely and voluntarily made and  
3 not the result of force or threats or of promises apart from  
4 those set forth in this plea agreement. There have been no  
5 representations or promises from anyone as to what sentence  
6 this Court will impose.

7           10. Court not a Party.

8           It is understood by the parties that the sentencing court  
9 is neither a party to nor bound by this agreement and the  
10 sentencing judge is free to impose the maximum penalties as  
11 set forth in paragraph 6. Further, in making its sentencing  
12 decision, the Court may take into consideration any and all  
13 facts and circumstances concerning the criminal activities of  
14 defendant, including activities which may not have been  
15 charged in the indictment.  
16

17           11. Presentence Report.

18           Defendant understands that the United States Probation  
19 Office is not a party to this agreement and will conduct an  
20 independent investigation of defendant's activities and her  
21 background. It will then prepare a presentence report which  
22 it will submit to the Court as its independent sentencing  
23 recommendation. In addition, the government will fully  
24 apprise the Probation Office, as well as the Court, of the  
25

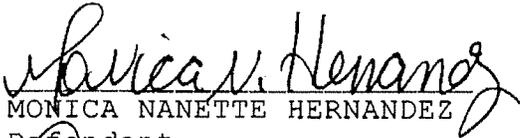
1 full and true nature, scope and extent of the defendant's  
2 criminal activities, including information on her background  
3 and criminal history.  
4

5 BENJAMIN B. WAGNER  
6 United States Attorney

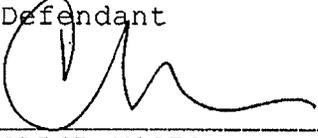
7 DATED: 1/2/13

  
8 GRANT B. RABENN  
9 Assistant U.S. Attorney

10 DATED: 11-15-13

  
11 MONICA NANETTE HERNANDEZ  
12 Defendant

13 DATED: 11-15-2013

  
14 CAROL MOSES  
15 Attorney for Defendant  
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