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Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MACEDONIO MADRIGAL-HERRERA,  
  
Defendant.

CASE NO. 1:15-CR-00216-LJO-SKO  
  
PLEA AGREEMENT  
  
DATE: TBD  
TIME: 8:30 a.m.  
COURT: Hon. Lawrence J. O'Neill

**I. INTRODUCTION**

**A. Scope of Agreement**

The indictment in this case charges the defendant with violations of 21 U.S.C. Sections 841(a)(1), 841(b)(1)(C), and 846 - Conspiracy To Manufacture, To Distribute, And To Possess With The Intent To Distribute Marijuana ("Count One"); 21 U.S.C. Sections 841(a)(1), 841(b)(1)(C), 18 U.S.C. § 2 - Manufacture Of Marijuana And Aiding And Abetting ("Count Two"); 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 18 U.S.C. § 2 - Possession Of Marijuana With The Intent To Distribute And Aiding And Abetting ("Count Three"); and 18 U.S.C. § 1361, 2 - Depredation Of Public Lands And Resources And Aiding And Abetting ("Count Four"). The indictment also contains a general forfeiture allegation. This document contains the complete plea agreement between the United States Attorney's Office for the Eastern District of California (the "government") and the defendant regarding this case. This plea agreement is limited to the United States Attorney's Office for the Eastern District of

California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

**B. Court Not a Party**

The Court is not a party to this plea agreement. Sentencing is a matter solely within the discretion of the Court, and the Court may take into consideration any and all facts and circumstances concerning the criminal activities of defendant, including activities that may not have been charged in the indictment. The Court is under no obligation to accept any recommendations made by the government, and the Court may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this plea agreement.

If the Court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations under this plea agreement. The defendant understands that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will receive.

**II. DEFENDANT'S OBLIGATIONS**

**A. Guilty Plea**

The defendant will plead guilty to the charge contained in Count One of the indictment information alleging violation of 21 U.S.C. Sections 841(a)(1), 841(b)(1)(C), and 846 - Conspiracy To Manufacture, To Distribute, And To Possess With The Intent To Distribute Marijuana ("Count One"). The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis For Plea attached hereto as Exhibit A are accurate.

The defendant agrees that this plea agreement will be filed with the Court and become a part of the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his plea should the Court not follow the government's sentencing recommendations.

The defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal

Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these rules are inconsistent with this paragraph or with this Agreement generally.

**B. Special Assessment**

The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering a check or money order payable to the United States District Court to the United States Probation Office immediately before the sentencing hearing. The defendant understands that this plea agreement is voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

**C. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

If the defendant, violates this plea agreement in any way, withdraws his plea, or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The government will no longer be bound by its representations to the defendant concerning the limits on criminal prosecution and sentencing as set forth herein. One way a defendant violates the plea agreement is to commit any crime or provide any statement or testimony which proves to be knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant constituting obstruction of justice will also be a violation of the agreement. The determination whether the defendant has violated the plea agreement shall be decided under a probable cause standard.

If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for any federal criminal violation of which the government has knowledge, including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

By signing this plea agreement, the defendant agrees to waive any objections, motions, and defenses that the defendant might have to the government's decision to exercise the options stated in the previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as

of the date of this plea agreement may be commenced in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement of any such prosecutions. The defendant agrees not to raise any objections based on the passage of time with respect to such counts including, but not limited to, any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as of the date of this plea agreement.

In addition: (1) all statements made by the defendant to the government or other designated law enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal, whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed. By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

**D. Restitution**

The defendant agrees to make restitution to the U.S. Forest Service in the amount of \$4,192.41 for the damage caused by the defendant's wrongful conduct, for which he is jointly and severally liable with his co-defendant.

**III. THE GOVERNMENT'S OBLIGATIONS**

**A. Dismissals**

The government agrees to move, at the time of sentencing, to dismiss without prejudice the remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed count except if this agreement is voided as set forth herein, or as provided in II.C (Defendant's Violation of Plea Agreement), VI.B (Guidelines Calculations), and VII.B (Waiver of Appeal) herein.

**B. Recommendations**

**1. Incarceration Range**

The government will recommend that the defendant be sentenced to the low end of the applicable guideline range for his offense.

2. Acceptance of Responsibility

The government will recommend a two-level reduction (if the offense level is less than 16) or a three-level reduction (if the offense level reaches 16) in the computation of defendant's offense level if he clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding.

3. Mitigating Role

The government agrees to recommend a two-level minor role reduction.

C. Use of Information for Sentencing

The government is free to provide full and accurate information to the Court and the United States Probation Office ("Probation"), including answering any inquiries made by the Court and/or Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement bars the government from defending on appeal or collateral review any sentence that the Court may impose.

IV. ELEMENTS OF THE OFFENSE

At a trial, the government would have to prove beyond a reasonable doubt the following elements of the offense(s) to which the defendant is pleading guilty:

As to Count One, Conspiracy To Manufacture, To Distribute, And To Possess With Intent To Distribute 50 Or More Marijuana Plants, in violation of 21 U.S.C. Sections 841(a)(1), 841(b)(1)(C), and 846:

1. There was an agreement between two or more persons to manufacture, to distribute and/or to possess with intent to distribute a controlled substance, which was marijuana; and
2. The defendant became a member of this conspiracy knowing of at least one of its criminal objectives and intending to help accomplish it



1 In addition, the government would have to prove beyond a reasonable doubt that:

2 The conspiracy involved 50 or more marijuana plants

3 The defendant fully understands the nature and elements of the crime charged in the indictment  
4 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with  
5 his attorney.

6 **V. MAXIMUM SENTENCE**

7 **A. Maximum penalty**

8 The maximum sentence that the Court can impose as to Count One, the drug conspiracy charge,  
9 is 20 years of incarceration, a fine of \$1 million, a 3 year minimum period of supervised release, a  
10 maximum life term of supervised release, and a special assessment of \$100. In addition, the defendant  
11 may be ineligible for certain federal and/or state assistance and/or benefits, pursuant to 21 U.S.C. § 862.  
12 By signing this plea agreement, the defendant also agrees that the Court can order the payment of  
13 restitution for the full loss caused by the defendant's wrongful conduct. The defendant agrees that the  
14 restitution order is not restricted to the amounts alleged in the specific count to which the defendant is  
15 pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in  
16 any present or future bankruptcy proceeding any restitution imposed by the Court.

17 **B. Violations of Supervised Release**

18 The defendant understands that if he violates a condition of supervised release at any time during  
19 the term of supervised release, the Court may revoke the term of supervised release and require the  
20 defendant to serve up to two years of additional imprisonment, as to the drug conspiracy charge, and up  
21 to five years of additional imprisonment, as to the firearm charge.

22 **VI. SENTENCING DETERMINATION**

23 **A. Statutory Authority**

24 The defendant understands that the Court must consult the Federal Sentencing Guidelines and  
25 must take them into account when determining a final sentence. The defendant understands that the  
26 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the  
27 Sentencing Guidelines and must take them into account when determining a final sentence. The  
28 defendant understands that the Court will determine a non-binding and advisory guideline sentencing

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

**B. Guideline Calculations**

The defendant is free to recommend to the Court whatever sentence he believes is appropriate under 18 U.S.C. § 3553(a). The government is obligated to recommend a low-end guideline sentence.

**VII. WAIVERS**

**A. Waiver of Constitutional Rights**

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be compelled to incriminate himself.

**B. Waiver of Appeal and Collateral Attack**

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case. The defendant specifically gives up the right to appeal any order of restitution the Court may impose.

Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant understands that these circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete waiver of all appellate rights.

In addition, regardless of the sentence the defendant receives, the defendant also gives up any

1 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any  
2 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

3 Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will  
4 move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss  
5 the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading  
6 guilty, the government shall have the rights set forth in paragraph II.C (Defendant's Violation of Plea  
7 Agreement) herein.

8 **C. Waiver of Attorneys' Fees and Costs**

9 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-  
10 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the  
11 investigation and prosecution of all charges in the above-captioned matter and of any related allegations  
12 (including without limitation any charges to be dismissed pursuant to this plea agreement and any  
13 charges previously dismissed).

14 **D. Impact of Plea on Defendant's Immigration Status**

15 Defendant recognizes that pleading guilty will likely have consequences with respect to his  
16 immigration status if his is not a citizen of the United States. Under federal law, a broad range of crimes  
17 are removable offenses, including offense(s) to which the defendant is pleading guilty. Indeed, because  
18 defendant is pleading guilty to drug charges, removal is presumptively mandatory. Removal and other  
19 immigration consequences are the subject of a separate proceeding, however, and defendant understands  
20 that no one, including his attorney or the district court, can predict to a certainty the effect of his  
21 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty  
22 regardless of any immigration consequences that his plea may entail, even if the consequence is his  
23 automatic removal from the United States.

24 **VIII. ENTIRE PLEA AGREEMENT**

25 Other than this plea agreement, no agreement, understanding, promise, or condition between the  
26 government and the defendant exists, nor will such agreement, understanding, promise, or condition  
27 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and  
28 counsel for the United States.



IX. APPROVALS AND SIGNATURES

A. Defense Counsel

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.


Dated: March 28, 2016

  
DANIEL HARRELSON  
Counsel for Defendant

B. Defendant

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

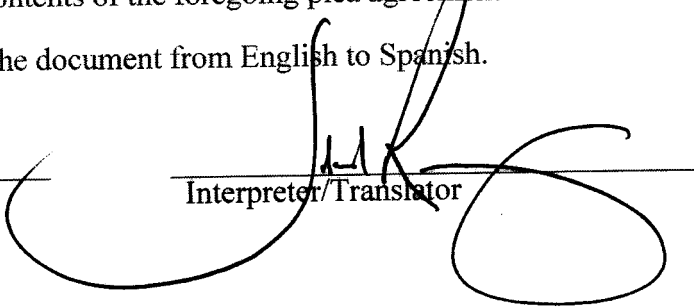
Dated: 3-28-16

  
MACEDONIO MADRIGAL-  
HERRERA, Defendant

C. Court Certified Interpreter/Translator

I declare that I am a court-certified Spanish-English interpreter/translator. On 3/28/16, I read the entire contents of the foregoing plea agreement to MACEDONIO MADRIGAL-HERRERA, translating the document from English to Spanish.

Dated: MARCH 28, 2016

  
Interpreter/Translator

Dated:

3/30/16

By: /s/ KAREN A. ESCOBAR  
KAREN A. ESCOBAR  
Assistant United States Attorney

**EXHIBIT "A"**  
**Factual Basis for Plea**

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

Between on or about March 1, 2015, and continuing to on or about July 30, 2015, in the Brush Creek drainage of the Sequoia National Forest, in the County of Kern, within the State and Eastern District of California, the defendant did knowingly and intentionally conspire and agree with others to manufacture, to distribute, and to possess with the intent to distribute 50 or more marijuana plants, a Schedule I controlled substance

Specifically, agents located a marijuana grow site in the Brush Creek drainage and executed a federal warrant there on July 30. As they were walking down the trail to the grow site, they encountered co- defendant EZEQUIEL ARMAS-ORTIZ, who fled after the agents announced their presence in Spanish. After he was apprehended, ARMAS-ORTIZ advised that there was another person in the grow site. The grow site and camp was about 100 yards away from where ARMAS-ORTIZ was apprehended. At the camp, agents found two sleeping bags, two backpacks, food, cooking utensils, a stove and a large amount of trash.

The agents found a second plot about 400 yards from the first. Defendant MACEDONIO MADRIGAL-HERRERA was working in the plot.

2,719 marijuana plants were counted and seized from the two plots.

Upon advice and waiver of his Miranda rights, the defendant said his job was to water marijuana plants. He also was going to be paid \$200 a day. He stated he knew it was illegal to grow marijuana; however, \$200 a day was a lot of money for him.

Water had been diverted from a stream that supports trout. New vegetation and trees that sprouted after the 2002 McNally Fire were eradicated to make room for the marijuana plants. Large piles of trash were found in the 10 acre grow site stuffed under boulders and buried along the stream. Toxic pesticides from Mexico and fertilizers were found at the site. It will cost \$4,192.41 to clean up the land.

Dated: 3-28-16

  
\_\_\_\_\_  
MACEDONIO MADRIGAL-  
HERRERA, Defendant