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8

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

11  
12 UNITED STATES OF AMERICA,  
13 Plaintiff,  
14 v.  
15 DAMACIO DIAZ,  
16 Defendant.

CASE NO. 1:15 CR 00326  
PLEA AGREEMENT  
COURT: Hon. Lawrence J. O'Neill

17  
18 **I. INTRODUCTION**

19 **A. Scope of Agreement**

20 The indictment in this case charges the defendant with a violation of 21 U.S.C. §§ 846 &  
21 841(a)(1) - Conspiracy to Distribute and Possess with the Intent to Distribute Methamphetamine [count  
22 1], 18 U.S.C. § 666(a)(1)(B) - Federal Programs Bribery [Counts 2-4], 21 U.S.C. §§ 841(a)(1) and 846 -  
23 Possession and Attempted Possession with the Intent to Distribute Methamphetamine [Counts 5-13], 18  
24 U.S.C. § 2511(1)(e) - Intentional Disclosure of Wiretap Information in Order to Obstruct, Impede, and  
25 Interfere with a Criminal Investigation [Counts 14], and Making and Subscribing a False Income Tax  
26 Return - 26 U.S.C. § 7206(1) [Counts 15-16] . This document contains the complete plea agreement  
27 between the United States Attorney’s Office for the Eastern District of California (the “government”)  
28 and the defendant regarding this case. This plea agreement is limited to the United States Attorney’s

1 Office for the Eastern District of California and cannot bind any other federal, state, or local  
2 prosecuting, administrative, or regulatory authorities.

3 **B. Court Not a Party**

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

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

15 **II. DEFENDANT'S OBLIGATIONS**

16 **A. Guilty Plea**

17 The defendant will plead guilty to Count 3 - Federal Programs Bribery in violation of 18 U.S.C.  
18 § 666(a)(1)(B), Count 10 - Possession and Attempted Possession with the Intent to Distribute  
19 Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846, and Count 15 - Making and  
20 Subscribing a False Income Tax Return in violation of 26 U.S.C. § 7206(1). The defendant agrees that  
21 he is in fact guilty of these charges and that the facts set forth in the Factual Basis For Plea attached  
22 hereto as Exhibit A are accurate.

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

26 The defendant agrees that the statements made by him in signing this Agreement, including the  
27 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by  
28 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a

1 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal  
2 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these  
3 rules are inconsistent with this paragraph or with this Agreement generally.

4 The defendant acknowledges that the crime to which he is pleading guilty is listed in 18 U.S.C.  
5 § 3143(a)(2), and agrees that he will be remanded into custody upon the entry of his plea.

6 **B. Special Assessment**

7 The defendant agrees to pay a special assessment of \$300 at the time of sentencing by delivering  
8 a check or money order payable to the United States District Court to the United States Probation Office  
9 immediately before the sentencing hearing. If the defendant is unable to pay the special assessment at  
10 the time of sentencing, he agrees to earn the money to pay the assessment, if necessary by  
11 participating in the Inmate Financial Responsibility Program.

12 **C. Agreement to Cooperate**

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

24 **D. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

25 If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,  
26 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The  
27 government will no longer be bound by its representations to the defendant concerning the limits on  
28 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the

1 plea agreement is to commit any crime or provide any statement or testimony which proves to be  
2 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant  
3 constituting obstruction of justice will also be a violation of the agreement. The determination whether  
4 the defendant has violated the plea agreement shall be decided under a probable cause standard.

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

12 By signing this plea agreement, the defendant agrees to waive any objections, motions, and  
13 defenses that the defendant might have to the government's decision to exercise the options stated in the  
14 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as  
15 of the date of this plea agreement may be commenced in accordance with this paragraph,  
16 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement  
17 and the commencement of any such prosecutions. The defendant agrees not to raise any objections  
18 based on the passage of time with respect to such counts including, but not limited to, any statutes of  
19 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth  
20 Amendment to any counts that were not time-barred as of the date of this plea agreement.

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

28 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

1           **E.     Forfeiture**

2           The defendant agrees to forfeit to the United States voluntarily and immediately all of his right  
3 title and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C); 21  
4 U.S.C. § 853; and 28 U.S.C. § 2461(c). Those assets include, but are not limited to, the following:

- 5           1.     2011 Toyota Sequoia SR5, Vehicle Identification Number 5TDZY5819BS037141,
- 6           2.     Approximately \$49,000.00 seized from Valley Republic Bank account number  
7 01802925, held in the name of DAMACIO DIAZ, and
- 8           3.     Real Property located at 157 Famoso Hills Road, McFarland, California, Kern County,  
9 APN: 074-020-72-00-4.

10          The defendant agrees that the listed assets constitutes property which is derived from, or is  
11 traceable to the proceeds obtained directly or indirectly from the commission of the criminal conduct, or  
12 scheme, or conspiracy, alleged in this Indictment; or any property traceable to such property of a  
13 violation of 18 U.S.C. § 981(a)(1)(C); 21 U.S.C. § 853; and 28 U.S.C. § 2461(c).

14          The defendant understands that in lieu of the forfeiture of asset numbers 1 and 3 listed above,  
15 (the 2011 Sequoia and the real property located at 157 Famoso Hills Road), defendant may provide a  
16 cashier's check, prior to the date of plea, in the amount of \$79,000 made payable to the U.S. Marshals  
17 Service and delivered to the U.S. Attorney's Office, Attn: Asset Forfeiture Unit, 2500 Tulare Street,  
18 Suite 4401, Fresno, CA 93721 (the "substitute res") which represents monies derived from, or which is  
19 traceable to the proceeds obtained directly or indirectly from the commission of his criminal conduct. If  
20 defendant makes the substitute res payment, the United States will release the listed assets 1 and 3 above  
21 to the defendant after sentencing.

22          In the event defendant does not deliver the substitute res payment to the United States prior to  
23 the date of plea, the defendant agrees to fully assist the government in the forfeiture of all the listed  
24 assets and not just in fully assisting in the forfeiture of listed asset 2 (Approximately \$49,000.00 seized  
25 from Valley Republic Bank account number 01802925) and to take whatever steps are necessary to pass  
26 clear title to the United States and agrees not sell, transfer, convey, or otherwise dispose of any of his  
27 assets, including but not limited to, the above-listed assets. In such case, the defendant agrees not to file  
28 a claim to any of the listed property in any civil proceeding, administrative or judicial, which may be

1 initiated, and agrees to waive his right to notice of any forfeiture proceeding involving this property, and  
2 agrees to not file a claim or assist others in filing a claim in that forfeiture proceeding.

3 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of  
4 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses  
5 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,  
6 and agrees to waive any claim or defense under the Eighth Amendment to the United States  
7 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,  
8 the State of California or its subdivisions.

9 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any  
10 defenses or defects that may pertain to the forfeiture.

11 **III. THE GOVERNMENT'S OBLIGATIONS**

12 **A. Dismissals**

13 The government agrees to move, at the time of sentencing, to dismiss without prejudice the  
14 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed  
15 count except if this agreement is voided as set forth herein, or as provided in paragraphs III.B.3  
16 (Cooperation), II.D (Defendant's Violation of Plea Agreement), and VII.B (Waiver of Appeal) herein.

17 **B. Recommendations**

18 1. Incarceration Range

19 The government will recommend that the defendant be sentenced to the low end of the  
20 applicable guideline range for his offense, including the application of the mandatory statutory minimum  
21 term, as determined by the Court.

22 2. Acceptance of Responsibility

23 The government will recommend a two-level reduction (if the offense level is less than  
24 16) or a three-level reduction (if the offense level reaches 16) in the computation of defendant's offense  
25 level if he clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §  
26 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of  
27 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging  
28 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the

1 preparation of the pre-sentence report or during the sentencing proceeding.

2 3. Reduction of Sentence for Cooperation

3 The government agrees to recommend at the time of sentencing that the defendant's  
4 sentence of imprisonment be reduced by up to 50% of the applicable guideline sentence if he provides  
5 substantial assistance to the government, pursuant to U.S.S.G. § 5K1.1. The defendant understands that  
6 he must comply with paragraph II.D (Agreement to Cooperate) and not violate this plea agreement, as  
7 set forth in paragraph II.E (Defendant's Violation of Plea Agreement) herein. The defendant  
8 understands that it is within the sole and exclusive discretion of the government to determine whether  
9 the defendant has provided substantial assistance.

10 The defendant understands that the government may recommend a reduction in his  
11 sentence of less than 50% or no reduction at all; depending upon the level of assistance the government  
12 determines that the defendant has provided. If the government's recommended reduction pursuant to §  
13 5K1.1 is for a sentence below the statutory mandatory minimum, the government will also move the  
14 Court for a reduction below that minimum term, pursuant to 18 U.S.C. § 3553(e).

15 The defendant further understands that a motion pursuant to U.S.S.G. § 5K1.1 is only a  
16 recommendation and is not binding on the Court, that this plea agreement confers no right upon the  
17 defendant to require that the government make a § 5K1.1 motion, and that this plea agreement confers  
18 no remedy upon the defendant in the event that the government declines to make a § 5K1.1 motion. In  
19 particular, the defendant agrees not to try to file a motion to withdraw his guilty plea based on the fact  
20 that the government decides not to recommend a sentence reduction or recommends a sentence  
21 reduction less than the defendant thinks is appropriate.

22 If the government determines that the defendant has provided further cooperation within  
23 one year following his sentencing, the government may move for a further reduction of his sentence  
24 pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

25 **C. Use of Information for Sentencing**

26 The government is free to provide full and accurate information to the Court and the United  
27 States Probation Office ("Probation"), including answering any inquiries made by the Court and/or  
28 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,

1 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement  
2 bars the government from defending on appeal or collateral review any sentence that the Court may  
3 impose.

4 Further, other than as set forth above, the government agrees that any incriminating information  
5 provided by the defendant during his cooperation will not be used in determining the applicable  
6 guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to  
7 representations made to the Court by the defendant, or on his behalf, that contradict information  
8 provided by the defendant during his cooperation.

9 **IV. ELEMENTS OF THE OFFENSE**

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

12 As to Count 3 - Federal Programs Bribery in violation of 18 U.S.C. § 666(a)(1)(B):

- 13 1. The Defendant was an agent of the Bakersfield Police Department (“BPD”) which was an  
14 agency of the City of Bakersfield, State and Eastern District of California; and
- 15 2. The BPD received federal assistance in excess of \$10,000 in a one-year period, to wit:  
16 calendar year 2013; and,
- 17 3. The Federal assistance was under a Federal program involving a grant, contract, subsidy,  
18 loan, guarantee, insurance or other form of Federal assistance; and,
- 19 4. The defendant accepted or agreed to accept, a thing of value from any person, to wit: over  
20 \$5,000 in cash payments from Guillermo Magallanes, intending to be influenced and  
21 rewarded in connection with his official acts as a police officer of BPD, and
- 22 5. The defendant acted corruptly.

23 To act corruptly means simply to act knowingly and intentionally with the purpose either of  
24 accomplishing an unlawful end or unlawful result or of accomplishing some otherwise lawful end or  
25 lawful result influenced by the receipt of the thing of value. Corrupt acts are ordinarily motivated by a  
26 hope or expectation of either financial gain or other benefit to one's self, or some aid or profit to  
27 another.

28 As to Count 10 - Possession and Attempted Possession with the Intent to Distribute



1 Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846:

- 2 1. That the defendant knowingly possessed more than 500 grams of actual
- 3 methamphetamine; and
- 4
- 5 2. That the defendant intended to distribute it to another person

6 As to Count 15 - Making and Subscribing a False Income Tax Return in violation of 26 U.S.C. §  
7 7206(1):

- 8 1. The defendant made and subscribed a return, statement, or other document which was
- 9 false as to a material matter; and
- 10 2. The return, statement, or other document contained a written declaration that it was made
- 11 under the penalties of perjury; and
- 12
- 13 3 The defendant did not believe the return, statement, or other document to be true and
- 14 correct as to every material matter; and
- 15
- 16 4. The defendant falsely subscribed to the return, statement, or other document willfully,
- 17 with the specific intent to violate the law.
- 18
- 19

20 The defendant fully understands the nature and elements of the crimes charged in the indictment  
21 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with  
22 his attorney.

23 **V. MAXIMUM SENTENCE**

24 **A. Maximum Penalty**

25 The maximum sentence that the Court can impose as to Count 3 - Federal Programs Bribery is  
26 ten years of incarceration, a fine of \$ \$250,000, a three year period of supervised release and a special  
27 assessment of \$100. The maximum sentence that the Court can impose as to Count 10 - Possession and  
28 Attempted Possession with the Intent to Distribute Methamphetamine is life imprisonment, a fine of

1 \$10,000,000, a period of five years up to life of supervised release and a special assessment of \$100.  
2 Count 10 to which defendant is pleading guilty also carries a ten-year mandatory minimum sentence,  
3 absent a motion by the government for reduction pursuant to 18 U.S.C. § 3553(e). The maximum  
4 sentence the Court can impose as to Count 15 - Making and Subscribing a False Income Tax Return is  
5 three years of incarceration, a fine of \$100,000 together with the costs of prosecution, a one year period  
6 of supervised release and a special assessment of \$100. In addition, the defendant may be ineligible for  
7 certain federal and/or state assistance and/or benefits, pursuant to 21 U.S.C. § 862. By signing this plea  
8 agreement, the defendant also agrees that the Court can order the payment of restitution for the full loss  
9 caused by the defendant's wrongful conduct. The defendant agrees that the restitution order is not  
10 restricted to the amounts alleged in the specific counts to which the defendant is pleading guilty. The  
11 defendant further agrees, as noted above, that he will not attempt to discharge in any present or future  
12 bankruptcy proceeding any restitution imposed by the Court.

13 **B. Violations of Supervised Release**

14 The defendant understands that if he violates a condition of supervised release at any time during  
15 the term of supervised release, the Court may revoke the term of supervised release and require the  
16 defendant to serve up to three years on Count 3, five years on Count 10 and one year on Count 15 of  
17 additional imprisonment.

18 **VI. SENTENCING DETERMINATION**

19 **A. Statutory Authority**

20 The defendant understands that the Court must consult the Federal Sentencing Guidelines and  
21 must take them into account when determining a final sentence. The defendant understands that the  
22 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the  
23 Sentencing Guidelines and must take them into account when determining a final sentence. The  
24 defendant further understands that the Court will consider whether there is a basis for departure from the  
25 guideline sentencing range (either above or below the guideline sentencing range) because there exists  
26 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into  
27 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further  
28 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must

1 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

2 **B. Guideline Calculations**

3 The defendant is free to recommend to the Court whatever sentence he believes is appropriate  
4 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence.

5 **VII. WAIVERS**

6 **A. Waiver of Constitutional Rights**

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

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

13 The defendant understands that the law gives the defendant a right to appeal his guilty plea,  
14 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to  
15 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not  
16 exceed 360 months. The defendant specifically gives up the right to appeal any order of restitution the  
17 Court may impose.

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

23 In addition, regardless of the sentence the defendant receives, the defendant also gives up any  
24 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any  
25 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

26 Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will  
27 move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss  
28 the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading

1 guilty, the government shall have the rights set forth in paragraph II.E (Defendant's Violation of Plea  
2 Agreement) herein.

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

4 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-  
5 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the  
6 investigation and prosecution of all charges in the above-captioned matter and of any related allegations  
7 (including without limitation any charges to be dismissed pursuant to this plea agreement and any  
8 charges previously dismissed).

9 **VIII. ENTIRE PLEA AGREEMENT**

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

14 **IX. APPROVALS AND SIGNATURES**

15 **A. Defense Counsel:**


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

19 Dated: 26 May 16 \_\_\_\_\_   
20 DAVID TORRES  
Counsel for Defendant

21 **B. Defendant:**

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

28 Dated: MAY 26, 2016 \_\_\_\_\_

  
\_\_\_\_\_  
DAMACIO DIAZ, Defendant

1  
2  
3 **C. Attorney for United States:**

4 I accept and agree to this plea agreement on behalf of the government.

5 Dated: April 24, 2016

BENJAMIN B. WAGNER  
United States Attorney

6 /s/ Brian K. Delaney

7 BRIAN K. DELANEY  
Assistant United States Attorney

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**EXHIBIT "A"**

**Factual Basis for Plea**

The defendant Damacio DIAZ agrees that the facts set forth below are true and accurate. Furthermore, if this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

Count 3- Federal Programs Bribery [18 U.S.C. § 666(a)(1)(B)]

Between April 2012 and February 2015 in the County of Kern, State and Eastern District of California, Defendant DIAZ while employed as a police officer with the Bakersfield Police Department, (BPD), operated a criminal informant by the name of Guillermo Magallanes. While operating Magallanes as a criminal informant, DIAZ was well aware that Magallanes was unlawfully involved in the large scale sale and distribution of actual methamphetamine. Despite knowing of Magallanes ongoing criminal narcotics activity, DIAZ continued to operate Magallanes as an informant. DIAZ also corruptly received bribes in the form of cash from Magallanes in return for providing Magallanes with intelligence on law enforcement practices and activities, tipping off Magallanes as to any potential or ongoing police investigations relating to Magallanes, and when possible providing protection to Magallanes from search, arrest, and prosecution. In addition, DIAZ corruptly provided Magallanes with the identities of other BPD and Kern County Sheriff's Department criminal informants to protect Magallanes' illegal drug activities from being discovered.

Count 10 - Possession and Attempted Possession with the Intent to Distribute Methamphetamine [21 U.S.C. §§ 841(a)(1) and 846]

On or about September 20, 2012, in the County of Kern, State and Eastern District of California, DIAZ while working as a police officer for the BPD, caused a uniformed BPD canine officer to make a stop of a vehicle operated by two individuals from Yakima, Washington. In conducting an initial search of the vehicle, the BPD canine officer uncovered an ice chest containing multiple bags (approximately 10 pounds) of actual methamphetamine. The BPD dog handler did not seize any of the drugs from the vehicle, but turned the scene over to DIAZ and his partner to secure the methamphetamine and oversee the investigation of the incident. On or about September 27, 2012, DIAZ booked approximately one pound of actual methamphetamine from the September 20, 2012 vehicle stop into evidence. The actual methamphetamine booked into evidence was only a small portion of the actual methamphetamine contained in the ice chest seized by DIAZ and his partner. DIAZ and his partner maintained possession of the remainder of the actual methamphetamine, approximately nine pounds, which they ultimately sold for their own personal gain. DIAZ admits that he and his partner unlawfully converted approximately nine pounds of actual methamphetamine to their sole possession which they later sold for profit. DIAZ agrees that for purposes of determining the offense level specified in the Drug Quantity Table of the Sentencing Guidelines, he should be held accountable for at least 1.5 KG but less than 4.5 KG of actual methamphetamine.

1 Count 15 - Making and Subscribing a False Income Tax Return [26 U.S.C. § 7206(1)]

2 On or about April 4, 2013, in the County of Kern, State and Eastern District of California, DIAZ,  
3 a resident of McFarland, California, did willfully make and subscribe a joint U.S. Individual Income Tax  
4 Return, for the calendar year 2012, which was verified by a written declaration that it was made under  
5 the penalties of perjury and which he knew to be false as to a material matter. That income tax return,  
6 which was filed with the Internal Revenue Service, reported total income in the amount of \$168,485,  
7 whereas, as he then and there knew and believed, he received additional income of at least \$97,900  
8 which he did not report in his 2012 U.S. Income Tax Return.

9 Dated: MAY 26, 2016

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12 DAMACIO DIAZ, Defendant  
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