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CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
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6 Attorneys for Plaintiff  
7 United States of America

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

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14 v.  
15 JUAN CARLOS MARTINEZ-TINOCO,  
16 Defendant.

CASE NO. 1:15CR304 DAD-BAM  
PLEA AGREEMENT  
DATE: TBD  
TIME: TBD  
COURT: Hon. Dale A. Drozd

17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The superseding indictment in this case charges the defendant with violation(s) of 21 U.S.C. §§  
20 841(a)(1), 841(b)(1)(C), and 846 - Conspiracy to Manufacture, to Distribute, and to Possess with the  
21 Intent to Distribute Marijuana ("Count One"); 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), 18 U.S.C. § 2 -  
22 Manufacture of Marijuana and Aiding and Abetting ("Count Two"); 21 U.S.C. §§ 841(a)(1) and  
23 841(b)(1)(C), 18 U.S.C. § 2 - Possession with the Intent to Distribute Marijuana and Aiding and  
24 Abetting ("Count Three"); 18 U.S.C. § 1361, 2 - Depredation of Public Lands and Resources And  
25 Aiding And Abetting ("Count Four"). The superseding indictment also contains a criminal forfeiture  
26 allegation, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 981(a)(1)(G), 21 U.S.C. § 853, and 28 U.S.C. §  
27 2461(c). This document contains the complete plea agreement between the United States Attorney's  
28

1 Office for the Eastern District of California (the “government”) and the defendant regarding this case.  
2 This plea agreement is limited to the United States Attorney’s Office for the Eastern District of  
3 California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory  
4 authorities.

5 **B. Court Not a Party.**

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

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

17 **II. DEFENDANT’S OBLIGATIONS**

18 **A. Guilty Plea.**

19 The defendant will plead guilty to Count Four, which charges a violation of 18 U.S.C. § 1361, 2  
20 - Depredation of Public Lands and Resources And Aiding And Abetting. The defendant agrees that he  
21 is in fact guilty of these charges and that the facts set forth in the Factual Basis for Plea attached hereto  
22 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(s) 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 Fed. R. Crim. P. 11(f)  
2 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this  
3 Agreement generally.

4 **B. Restitution.**

5 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of  
6 certain offenses. The defendant agrees the conduct to which he is pleading guilty requires mandatory  
7 restitution pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii), and agrees to pay restitution to the U.S. Forest  
8 Service in the amount of \$4,286.81. Restitution payments shall be by cashier's or certified check made  
9 payable to the Clerk of the Court. He further acknowledges that he is jointly and severally liable with  
10 his co-defendants for the amount of restitution.

11 Defendant further agrees that he will not seek to discharge any restitution obligation or any part  
12 of such obligation in any bankruptcy proceeding.

13 **C. Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

14 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw  
15 his plea, this plea agreement is voidable at the option of the government. If the government elects to  
16 void the agreement based on the defendant's violation, the government will no longer be bound by its  
17 representations to the defendant concerning the limits on criminal prosecution and sentencing as set  
18 forth herein. A defendant violates the plea agreement by committing any crime or providing or  
19 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in  
20 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting  
21 obstruction of justice. The government also shall have the right (1) to prosecute the defendant on any of  
22 the counts to which he pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this  
23 plea agreement; and (3) to file any new charges that would otherwise be barred by this plea agreement.  
24 The defendant shall thereafter be subject to prosecution for any federal criminal violation of which the  
25 government has knowledge. The decision to pursue any or all of these options is solely in the discretion  
26 of the United States Attorney's Office.

27 By signing this plea agreement, the defendant agrees to waive any objections, motions, and  
28 defenses that the defendant might have to the government's decision. Any prosecutions that are not

1 time-barred by the applicable statute of limitations as of the date of this plea agreement may be  
2 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of  
3 limitations between the signing of this plea agreement and the commencement of any such prosecutions.  
4 The defendant agrees not to raise any objections based on the passage of time with respect to such  
5 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy  
6 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as  
7 of the date of this plea agreement. The determination of whether the defendant has violated the plea  
8 agreement will be under a probable cause standard.

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

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

18 **A. Dismissals/Other Charges.**

19 The government agrees to move, at the time of sentencing, to dismiss without prejudice the  
20 remaining counts in the pending superseding indictment. The government also agrees not to reinstate  
21 any dismissed count except if this agreement is voided as set forth herein, or as provided in paragraphs  
22 II.C (Violation of Plea Agreement by Defendant/Withdrawal of Plea(s)) and VII.B (Waiver of Appeal  
23 and Collateral Attack) herein.

24 **B. Recommendations.**

25 1. Incarceration Range.

26 The government will recommend that the defendant be sentenced to the low end of the  
27 applicable guideline range as determined by the Court.

1           2.     Acceptance of Responsibility.

2           The government will recommend a two-level reduction (if the offense level is less than  
3 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if  
4 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §  
5 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of  
6 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging  
7 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the  
8 preparation of the pre-sentence report or during the sentencing proceeding.

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

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

15                                   **IV.     ELEMENTS OF THE OFFENSE**

16          At a trial, the government would have to prove beyond a reasonable doubt the following  
17 elements of the offense(s) to which the defendant is pleading guilty, Depredation of Public Lands and  
18 Resources And Aiding And Abetting:

- 19           1.     The defendant willfully injured or committed a depredation;  
20           2.     The injury was against property;  
21           3.     The property belonged to the United States of America, specifically the U.S.  
22                 Forest Service; and  
23           4.     The resulting damage to the property exceeded \$1,000.

24          A defendant may be found guilty of aiding and abetting depredation of public lands and  
25 resources, even if the defendant personally did not commit the act or acts constituting the crime but  
26 aided and abetted in its commission. To establish liability as an aider and abettor, the government must  
27 prove beyond a reasonable doubt that:

- 28           1.     The depredation of government property was committed by someone;

1           2.     The defendant aided, counseled, commanded, induced or procured that person  
2 with respect to at least one element of the depredation of government property;

3           3.     The defendant acted with the intent to facilitate depredation; and

4           4.     The defendant acted before the crime was completed.

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

8   **V.     MAXIMUM SENTENCE**

9           **A.     Maximum Penalty.**

10           The maximum sentence that the Court can impose is 10 years of incarceration, a fine of  
11 \$250,000, a 3 year period of supervised release and a special assessment of \$100. By signing this plea  
12 agreement, the defendant also agrees that the Court can order the payment of restitution for the full loss  
13 caused by the defendant's wrongful conduct. The defendant further agrees, as noted above, that he will  
14 not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the  
15 Court.

16           **B.     Violations of Supervised Release.**

17           The defendant understands that if he violates a condition of supervised release at any time during  
18 the term of supervised release, the Court may revoke the term of supervised release and require the  
19 defendant to serve up to 2 additional years imprisonment.

20   **VI.     SENTENCING DETERMINATION**

21           **A.     Statutory Authority.**

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

1 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further  
2 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must  
3 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

4 The defendant is free to recommend to the Court whatever sentence he believes is appropriate  
5 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence, other  
6 than as set forth herein.

7 **VII. WAIVERS**

8 **A. Waiver of Constitutional Rights.**

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

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

15 The defendant understands that the law gives the defendant a right to appeal his guilty plea,  
16 conviction, and sentence. The defendant agrees as part of his plea(s), however, to give up the right to  
17 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not  
18 exceed [the statutory maximum(s) for the offense(s) to which he is pleading guilty] [or] [- months]. The  
19 defendant specifically gives up the right to appeal any order of restitution the Court may impose.

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

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

28 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever

1 attempts to vacate his plea(s), dismiss the underlying charges, or modify or set aside his sentence on any  
2 of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.C  
3 herein.

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

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

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

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

19 **VIII. ENTIRE PLEA AGREEMENT**

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

24 ///

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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: September 14, 2016

  
DANIEL HARRALSON  
Attorney 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.

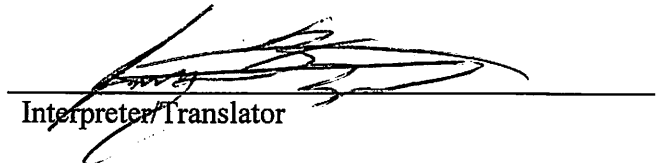
Dated: 9-19-2016

  
JUAN CARLOS MARTINEZ-TINOCO  
Defendant

C. Court Certified Interpreter/Translator:

I declare that I am a court certified Spanish-English interpreter/translator. On Jimmy Belmonte read the entire contents of the foregoing plea agreement to Luis Enrique Flores, translating the document from English to Spanish.

Dated:

  
Interpreter/Translator

D. Attorney for United States:

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

1 Dated: 9/14/16

PHILLIP A. TALBERT  
Acting United States Attorney

*Karen Escobar*

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KAREN A. ESCOBAR  
Assistant United States Attorney

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EXHIBIT "A"

Factual Basis for Plea(s)

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

Beginning at a time unknown, but no later than on or about March 1, 2015, and continuing to on or about August 4, 2015, in the Needles area of the Sierra National Forest in the County of Tulare, the defendant willfully committed or aided and abetted the commission of, a depredation against land and natural resources of the United States, specifically the U.S. Forest Service, an agency of the United States.

During this time frame, the defendant was involved in a marijuana cultivation operation consisting of approximately 2,608 marijuana plants in the Needles area of the Sequoia National Park. The operation damaged public land and natural resources. Agents observed evidence of the use of harmful poisons, agents found 50 pound bags of high nitrogen fertilizer. They also noted that many of the native plants and trees were cut to make room for the marijuana plants. Water was diverted from a spring that supports wildlife. Large piles of trash were stuffed under boulders and buried along the stream. The water source for the grow site drains into the Upper Kern River, which contains the Kern River Rainbow Trout, a localized species of rainbow trout that has been designated in the State of California a "Species of Special Concern." It will cost \$4,286.81 to clean up the damaged area.

Dated:

9-14-2016

  
JUAN CARLOS MARTINEZ-TINOCO  
Defendant