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

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 EARL JOHN VELASQUEZ,
16 Defendant.

CASE NO. 1:18-CR-00184 LJO SKO

PLEA AGREEMENT

DATE: [CLICK HERE TO ENTER A DATE](#)
TIME: [ENTER TIME]
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 Stalking, in violation of Title 18, United
21 States Code, § 2261A(2)(B). This document contains the complete plea agreement between the United
22 States Attorney's Office for the Eastern District of California (the "government") and the defendant
23 regarding this case. This plea agreement is limited to the United States Attorney's Office for the Eastern
24 District of California and cannot bind any other federal, state, or local prosecuting, administrative, or
25 regulatory authorities.

26 B. Court Not a Party.

27 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
28 discretion of the Court, and the Court may take into consideration any and all facts and circumstances

1 concerning the criminal activities of defendant, including activities which may not have been charged in
2 the indictment. The Court is under no obligation to accept any recommendations made by the
3 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
4 including the statutory maximum stated in this plea agreement.

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

10 **II. DEFENDANT'S OBLIGATIONS**

11 **A. Guilty Plea.**

12 The defendant will plead guilty to Count One of the indictment. The defendant agrees that he is
13 in fact guilty of this charge and that the facts set forth in the Factual Basis for Plea attached hereto as
14 Exhibit A are accurate.

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

18 The defendant agrees that the statements made by him in signing this Agreement, including the
19 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
20 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
21 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
22 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
23 Agreement generally.

24 **B. Fine.**

25 The parties agree that no fine is appropriate in this case.

26 **C. Special Assessment.**

27 The defendant agrees to pay a special assessment of \$100.00 at the time of sentencing by
28 delivering a check or money order payable to the United States District Court to the United States

1 Probation Office immediately before the sentencing hearing. If the defendant is unable to pay the
2 special assessment at the time of sentencing, he agrees to earn the money to pay the assessment, if
3 necessary by participating in the Inmate Financial Responsibility Program.

4 **D. Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

5 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
6 his plea, this plea agreement is voidable at the option of the government. If the government elects to
7 void the agreement based on the defendant's violation, the government will no longer be bound by its
8 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
9 forth herein. A defendant violates the plea agreement by committing any crime or providing or
10 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
11 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
12 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
13 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
14 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)
15 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
16 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
17 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
18 any federal criminal violation of which the government has knowledge. The decision to pursue any or
19 all of these options is solely in the discretion of the United States Attorney's Office.

20 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
21 defenses that the defendant might have to the government's decision. Any prosecutions that are not
22 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
23 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
24 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
25 The defendant agrees not to raise any objections based on the passage of time with respect to such
26 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
27 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
28 of the date of this plea agreement. The determination of whether the defendant has violated the plea

1 agreement will be under a probable cause standard.

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

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

11 **A. Recommendations.**

12 1. Incarceration Range.

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

15 2. Acceptance of Responsibility.

16 The government will recommend a two-level reduction (if the offense level is less than
17 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if
18 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G.
19 § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation
20 of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise
21 engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either
22 in the preparation of the pre-sentence report or during the sentencing proceeding.

23 **B. Use of Information for Sentencing.**

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

1 **IV. ELEMENTS OF THE OFFENSE**

2 At a trial, the government would have to prove beyond a reasonable doubt the following
3 elements of the offense to which the defendant is pleading guilty, namely, Stalking, in violation of 18
4 U.S.C. § 2261A(2)(B):

5 First, that the defendant intended to kill, injure, harass, intimidate, or placed under
6 surveillance with intent to kill, injure, harass, or intimidate another person; and

7 Second, that the defendant engaged in a course of conduct using any interactive computer
8 service or electronic communication service or electronic communication system of interstate
9 commerce, or any other facility of interstate commerce, to wit: used the telephone, electronic mail, the
10 internet and internet-based social media applications, that caused, attempted to cause or would
11 reasonably be expected to cause substantial emotional distress to another person.

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

15 **V. MAXIMUM SENTENCE**

16 **A. Maximum Penalty.**

17 The maximum sentence that the Court can impose is 5 years of incarceration, a fine of
18 \$250,000.00, a 3 year period of supervised release and a special assessment of \$100.00.

19 **B. Violations of Supervised Release.**

20 The defendant understands that if he violates a condition of supervised release at any time during
21 the term of supervised release, the Court may revoke the term of supervised release and require the
22 defendant to serve up to 3 additional years imprisonment.

23 **VI. SENTENCING DETERMINATION**

24 **A. Statutory Authority.**

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

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

7 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
8 under 18 U.S.C. § 3553(a).

9 **VII. WAIVERS**

10 **A. Waiver of Constitutional Rights.**

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

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

17 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
18 conviction, and sentence. The defendant agrees as part of his plea(s), however, to give up the right to
19 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
20 exceed the statutory maximum for the offense to which he is pleading guilty.

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

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

1 Notwithstanding the government's agreements above, if the defendant ever attempts to vacate his
2 plea, dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which
3 he is pleading guilty, the government shall have the rights set forth in Section II.D 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 **VIII. ENTIRE PLEA AGREEMENT**

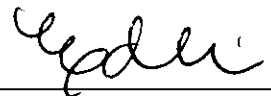
11 Other than this plea agreement, no agreement, understanding, promise, or condition between the
12 government and the defendant exists, nor will such agreement, understanding, promise, or condition
13 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and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

15 **IX. APPROVALS AND SIGNATURES**

16 **A. Defense Counsel.**

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

20 Dated:

21 
22 _____
23 EMILY de LEON
24 Attorney for Defendant

25 **B. Defendant:**

26 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
27 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully
28 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

1 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.

2 Finally, I am satisfied with the representation of my attorney in this case.

3 Dated:

Earl John Velasquez

4 _____
EARL JOHN VELASQUEZ
Defendant

5 **C. Court Certified Interpreter/Translator:**

6 I declare that I am a court ***certified ***Spanish-English interpreter/translator. On

7 _____, I read the entire contents of the foregoing plea agreement to ****, translating the
8 document from English to ***Spanish.

9 Dated:

10 _____
Interpreter/Translator

11 **D. Attorney for United States:**

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

13 Dated: "[Click & Type Name]"

2/7/19

14 MCGREGOR W. SCOTT
United States Attorney

15 _____
16 MELANIE L. ALSWORTH
17 Assistant United States Attorney
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EXHIBIT "A"

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2 Beginning on or about January 1, 2018, and continuing until on or about June 1, 2018, in the
3 County of Kern, State and Eastern District of California, the defendant, with the intent to kill, injure,
4 harass and intimidate, used any interactive computer service, electronic communication service or
5 electronic communication system of interstate commerce, or any other facility of interstate or foreign
6 commerce, to wit: used the telephone, electronic mail, the internet and internet-based social media
7 applications, to engage in a course of conduct that caused, attempted to cause, and would reasonably be
8 expected to cause substantial emotional distress to T.A., all in violation of Title 18, United States Code,
9 Section 2261A(2)(B), as more specifically described below.

10 Velasquez, using his and his mother's cellular telephones to connect to the internet, used
11 internet-based social media applications on these cellular telephones to post threatening statements about
12 and to send threatening communications to an adult female, T.A., a resident of the State of Florida.
13 Velasquez used his personal social media accounts, his mother's social media account, and a third
14 account he created using a fictitious name ("Paul Sanchez") for the purpose of sending threatening
15 communications while secreting his true identity.

16 After sending several unsolicited messages to T.A., she removed Velasquez as a Facebook
17 "friend" on March 11, 2018. Velasquez attempted to "friend" T.A. using his mother's account and the
18 "Paul Sanchez" account. One request was ignored and the other denied. Within minutes of learning the
19 "friend" request was denied, Velasquez sent T.A. a message from the "Paul Sanchez" Facebook account
20 stating "It's not over yet I know where you live now thanks to this new technology and I even know
21 more than I told you didn't I I'm one of those people who does shit like this for fun why because I can
22 and I know you don't enough about me to prove anything lol good luck on getting the FBI to investigate
23 I even out smart them by anyway just remember I got eyes on you."

24 On or about March 14, 2018, Velasquez posted a response in a Twitter feed, "I'm planning on
25 shooting up a tattoo parlor in for Walton and I won't be using an ar15 either I'm going to use the guns
26 pictured below to do it why I'm telling you this I don't know but #itwillhappenagain". Using his
27 mother's Facebook account, Velasquez messaged T.A. on March 16, "Hey I saw what my son sent you
28 here's my number [omitted] maybe you can talk some sense into him he's been disrespectful lately and
29 he won't stop talking about killing you till you put him in his place." On April 30, Velasquez
30 commented on an Instagram post in which T.A. was tagged, stating "Im going to kill that girl one day."
31 On May 25, using his mother's Facebook account, Velasquez messaged T.A., "Your going to die soon
32 I'm going to say".

33 Velasquez's course of conduct was reasonably expected to cause and did cause substantial
34 emotional distress to T.A.