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6 Attorneys for Plaintiff
 7 UNITED STATES OF AMERICA

8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,
 11 Plaintiff,
 12 v.
 13 JOSE GAYTAN,
 14 Defendant.

Case No. 19CR3255-BTM _____

PLEA AGREEMENT

16 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its
 17 counsel, Robert S. Brewer, Jr., United States Attorney, and Christopher P. Tenorio, Assistant United States
 18 Attorney, and Defendant, Jose Gaytan, with the advice and consent of Benjamin J. Cheeks, Esq., counsel
 19 for Defendant, as follows:

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28 CPT: 2/21/20

Def. Initials SG

I

THE PLEA

A. THE CHARGES

Defendant agrees to plead guilty to Counts 1 and 7 of the Indictment, charging Defendant with:

Count 1 (Conspiracy):

37. From on or about May 1, 2013, to at least July 28, 2018, within the Southern District of California and elsewhere, defendants VICTOR GONZALEZ, SUSAN CHRISTINE LEYVA, aka Susan Christine Gonzalez, aka Christy Gonzalez, JOSE "JOE" ANTHONY DIAZ, MERCEDES GONZALES, aka Mercy Diaz, ARNOLDO BUGARIN, AZUCENA TORRES, aka Susana Bugarin, SERGIO PARTIDA, ANA KAREN ROBLES ORTIZ, aka Karen Partida, JOSE "CHITO" MORALES, JOSE DEMARA FLORES, aka Joe Flores, JOSE GAYTAN, and SONIA MURILLO, did conspire together and with each other, and others known and unknown to the grand jury, to commit one or more of the following offenses against the United States:

a. Forced Labor, that is, to knowingly obtain the labor or services of a person by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm, in violation of Title 18, United States Code, Section 1589;

c. Benefits Fraud, that is, to knowingly use, transfer, acquire, or possess benefits in any manner contrary to Chapter 51 of the Food Stamp Regulations, if such benefits are of a value of \$100 or more, in violation of Title 7, United States Code, Sections 2024(b);

Count 7 (Benefits Fraud):

49. From on or about May 1, 2013, to at least July 28, 2018, within the Southern District of California and elsewhere, defendants VICTOR GONZALEZ, SUSAN CHRISTINE LEYVA, aka Susan Christine Gonzalez, aka Christy Gonzalez, JOSE "JOE" ANTHONY DIAZ, MERCEDES GONZALES, aka Mercy Diaz, ARNOLDO BUGARIN, AZUCENA TORRES, aka Susana Bugarin, SERGIO PARTIDA, ANA KAREN ROBLES ORTIZ, aka Karen Partida, JOSE "CHITO" MORALES, JOSE DEMARA FLORES, aka Joe Flores, JOSE GAYTAN, and SONIA MURILLO, did knowingly and intentionally transfer, acquire and possess SNAP benefits, valuing \$5,000 or more, in any manner contrary to the governing statute and regulations; in violation of Title 7, United States Code, Section 2024(b).

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II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

The offense to which Defendant is pleading guilty has the following elements:

Count 1 (Conspiracy):

1. Beginning on or about [date], and ending on or about [date], there was an agreement between two or more persons to commit at least one crime as charged in the indictment; [and]
2. The defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it[.] [; and]
3. One of the members of the conspiracy performed at least one overt act [on or after [date]] for the purpose of carrying out the conspiracy.]

Count 7 (Benefits Fraud):

1. The defendant acquired more than \$100 [\$5,000] worth of [food stamps] in a way that was contrary to law;
2. The defendant knew that his acquisition of the [food stamps] was contrary to law.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each element of the crime and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

Introductory Allegations:

5. [] IVM rented a home located at 1022 Euclid Avenue, El Centro, California ("Euclid Location"), . . . and a home located at 517 Jefferson Avenue, Chula Vista, California ("Chula Vista Location").

7. From at least January 1, 2015 through at least December 14, 2017, doors at the Euclid Location were locked with deadbolts and only IVM members had access to keys to unlock the doors from the inside.

1 16. Defendants JOSE GAYTAN and SONIA MURILLO were home directors at the
2 Euclid Location from on or about October 1, 2017 to on or about May 1, 2018, and were home directors at
3 the Chula Vista Location from on or about May 1, 2018 until at least June 13, 2018.

4 18. IVM members checked in IVM participants at the IVM group homes, which
5 included requiring IVM participants to sign “sign-in sheets” upon entry into IVM.

6 19. IVM sign-in sheets included an agreement that IVM participants adhere to IVM’s
7 29 Rules

8 20. The United States Department of Agriculture (“USDA”) Food and Nutrition Service
9 (“FNS”) operated the Supplemental Nutrition Assistance Program (“SNAP”) through the Food Stamp
10 Program. The Food Stamp Program was implemented by Congress in order to safeguard the health and
11 well-being of the Nation’s population by raising levels of nutrition among low-income households by
12 augmenting the food purchasing power of low-income families.

13 21. USDA-FNS delegated authority to individual states to determine eligibility and to
14 certify individual SNAP recipients who qualified for the program. Persons in need, who wished to obtain
15 SNAP benefits, applied with the appropriate state agency.

16 23. SNAP benefits recipients agreed to the requirements and limitations of the program
17 on the application for benefits, including Food Stamp Regulations that require certain beneficiaries to work
18 (see 7 U.S.C.A. §§ 2015(d)(1)(A), (o)(2)), and only permit SNAP benefits for eligible persons or
19 households (see 7 U.S.C.A. §§ 2012(m)(1)(B)(4), 2014(a))

20 Manner and Means of the Conspiracy:

21 38. It was part of the scheme that Defendants knowingly benefitted financially from a
22 venture that required IVM participants to obtain panhandling proceeds through a scheme, plan, and pattern
23 intended to cause IVM participants to believe that if they did not panhandle on behalf of IVM they would
24 suffer serious psychological, financial, or reputational harm. The Defendants participated in the venture
25 knowing or in reckless disregard of the fact that it had engaged in obtaining the IVM participants’ labor by
26 such means (18 U.S.C. § 1589).

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1 41. It was further part of the scheme that Defendants knowingly used, transferred,
2 acquired, and possessed SNAP benefits by requiring IVM participants to surrender their EBT cards to
3 provide SNAP benefits to ineligible persons (7 U.S.C. § 2024(b)).

4 Count 1 (Conspiracy):

5 1. Beginning on or about May 1, 2013, and ending on or about July 28, 2018, Defendant agreed
6 with defendants VICTOR GONZALEZ, SUSAN CHRISTINE LEYVA, aka Susan
7 Christine Gonzalez, aka Christy Gonzalez, JOSE “JOE” ANTHONY DIAZ, MERCEDES
8 GONZALES, aka Mercy Diaz, ARNOLDO BUGARIN, AZUCENA TORRES, aka Susana
9 Bugarin, SERGIO PARTIDA, ANA KAREN ROBLES ORTIZ, aka Karen Partida, JOSE
10 “CHITO” MORALES, JOSE DEMARA FLORES, aka Joe Flores, and SONIA MURILLO
11 to commit the crimes of forced labor and benefits fraud;

12 2. Defendant became a member of the conspiracy knowing of at least one of its objects and
13 intending to help accomplish it.

14 3. The following members of the conspiracy performed the following overt act, on or after the
15 date indicated, for the purpose of carrying out the conspiracy:

16 a. Between or about May 1, 2013 and June 30, 2016, defendant VICTOR GONZALEZ
17 instructed IVM members to keep IVM participants from leaving IVM because IVM needed money.

18 b. Between or about May 1, 2013 and at least July 28, 2018, defendants VICTOR
19 GONZALEZ, SUSAN CHRISTINE LEYVA, aka Susan Christine Gonzalez, aka Christy Gonzalez, JOSE
20 “JOE” ANTHONY DIAZ, MERCEDES GONZALES, aka Mercy Diaz, SERGIO PARTIDA, ANA
21 KAREN ROBLES ORTIZ, aka Karen Partida, and IVM members under their direction, induced IVM
22 participants’ consent to surrender SNAP benefits for the benefit of IVM through the wrongful use of actual
23 or threatened fear of economic loss.

24 c. Between or about May 1, 2013 and at least July 28, 2018, defendants VICTOR
25 GONZALEZ, JOSE “JOE” ANTHONY DIAZ, and MERCEDES GONZALES, aka Mercy Diaz, and IVM
26 members under their direction, refused to return EBT cards to IVM participants who requested to leave
27 IVM unless specifically requested by the participant.

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1 d. Between or about May 1, 2013 and at least July 28, 2018, IVM members, upon the
2 direction of defendants VICTOR GONZALEZ, JOSE "JOE" ANTHONY DIAZ, and MERCEDES
3 GONZALES, aka Mercy Diaz, told IVM participants who requested to leave IVM that they must wait for
4 a home director to return in order to receive their personal belongings in order to compel them to remain
5 at IVM.

6 e. Between or about May 1, 2013 and June 13, 2018, defendants VICTOR
7 GONZALEZ and SUSAN CHRISTINE LEYVA, aka Susan Christine Gonzalez, aka Christy Gonzalez,
8 acquired, possessed, used, and transferred EBT cards belonging to IVM participants for the benefit of
9 ineligible persons.

10 f. Between or about May 1, 2013 and May 22, 2018, defendant VICTOR
11 GONZALEZ, and IVM members under his direction, determined fundraising teams and dispatched IVM
12 participants to panhandle for the benefit of IVM.

13 g. Between or about May 1, 2013 and at least July 28, 2018, defendant VICTOR
14 GONZALEZ, SUSAN CHRISTINE LEYVA, aka Susan Christine Gonzalez, aka Christy Gonzalez, and
15 IVM members under their direction, collected panhandling proceeds from IVM participants.

16 i. Between or about July 1, 2014 and May 22, 2018, defendants JOSE "JOE"
17 ANTHONY DIAZ and MERCEDES GONZALES, aka Mercy Diaz, possessed and used EBT cards
18 belonging to IVM participants for the benefit of ineligible persons.

19 k. Between or about July 1, 2016 and June 13, 2018, defendants VICTOR
20 GONZALEZ, SUSAN CHRISTINE LEYVA, aka Susan Christine Gonzalez, aka Christy Gonzalez,
21 SERGIO PARTIDA, and IVM members under their direction, acquired, possessed, used, and transferred
22 EBT cards belonging to IVM participants upon instructing IVM participants not to seek or accept
23 employment outside of IVM.

24 n. Between or about August 1, 2016 and June 13, 2018, IVM members, upon the
25 consultation and direction of defendants VICTOR GONZALEZ, JOSE "JOE" ANTHONY DIAZ,
26 MERCEDES GONZALES, aka Mercy Diaz, SERGIO PARTIDA, and ANA KAREN ROBLES ORTIZ,
27 aka Karen Partida, punished IVM participants for breaking IVM rules.

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1 rr. Between or about January 1, 2018 and June 28, 2018, defendants JOSE GAYTAN
2 and SONIA MURILLO required IVM member "R.S." to panhandle on behalf of IVM, confiscated all of
3 her fundraising proceeds, required fasting on Wednesdays, and required another person to accompany her
4 in order to leave the Euclid Location.

5 zz. Between or about February 1, 2018 and May 22, 2018, defendants JOSE GAYTAN
6 and SONIA MURILLO possessed and used EBT cards belonging to IVM participants for the benefit of
7 ineligible persons.

8 4. Between approximately October 1, 2017 and approximately May 1, 2018, defendant
9 VICTOR GONZALEZ instructed Defendant, and other home directors, to screw or nail
10 windows shut and keep doors locked from the inside at the IVM properties in order to
11 prevent IVM participants from leaving, and would punish Defendant if he failed to do so.

12 5. Between approximately October 1, 2017 and approximately May 1, 2018, defendants
13 VICTOR GONZALEZ and JOSE "JOE" ANTHONY DIAZ instructed Defendant it was
14 necessary to continue recruiting participants into IVM, and prevent participants from
15 leaving, in order to increase fundraising proceeds for the benefit of IVM.

16 6. Between approximately September 7, 2013 and approximately October 1, 2017, defendants
17 VICTOR GONZALEZ and JOSE "JOE" ANTHONY DIAZ instructed Defendant to use
18 various methods to prevent IVM participants from leaving, including falsely instructing
19 female participants that Child Protective Services would take their children, or fail to return
20 them, if they left IVM.

21 Count 7 (Benefits Fraud):

22 1. Defendant applied for SNAP benefits on November 9, 2015, and signed under penalty of
23 perjury that he had read, understood, and agreed to the CalFresh Program Rights, and had
24 read and understood the CalFresh Responsibilities and Program Rules.

25 2. The defendant knew that his acquisition of the SNAP benefits would be contrary to law
26 because he was not a United States Citizen.

27 3. Between November 9, 2015 and approximately July 28, 2018, Defendant acquired more
28 than \$100 worth of SNAP benefits, including those belonging to "R.S.," in a way that was

1 contrary to law because he was not eligible for SNAP benefits and was not authorized to
2 receive them from an eligible recipient, contrary to Food Stamp Regulations (7 U.S.C. §§
3 2012(m)(1)(B)(4), 2014(a)).

4 **III**

5 **PENALTIES**

6 The crime to which Defendant is pleading guilty carries the following penalties:

7 Count 1 (Conspiracy):

- 8 A. Maximum five years in prison;
- 9 B. Maximum \$250,000 fine;
- 10 C. Mandatory special assessment of \$100 per count;
- 11 D. A term of supervised release of not more than three years. Defendant understands that
12 failure to comply with any of the conditions of supervised release may result in revocation
13 of supervised release, requiring defendant to serve in prison all or part of the term of
14 supervised release; and,
- 15 E. An order from the Court pursuant to 18 U.S.C. § 3663A that defendant make mandatory
16 restitution to the victims of the offense of conviction, or the estates of the victims. Defendant
17 understands that the Court shall also order, if agreed to by the parties in this plea agreement,
18 restitution to persons other than the victims of the offense of conviction.
- 19 F. Forfeiture of any property, real or personal, which constitutes or is derived from proceeds
20 traceable to the offense.

21 Count 7 (Benefits Fraud):

- 22 A. If the benefits are of a value of \$100 or more, but less than \$5,000, the maximum penalty is
23 five years of imprisonment and a fine of \$10,000.
- 24 B. If the benefits are of a value of more than \$5,000, the maximum penalty is 20 years of
25 imprisonment and a fine of \$250,000.
- 26 C. \$100 special assessment.
- 27 D. A term of supervised release of not more than three years. Defendant understands that
28 failure to comply with any of the conditions of supervised release may result in revocation

1 of supervised release, requiring defendant to serve in prison all or part of the term of
2 supervised release.

3 E. Benefits may be suspended for a period of 18 months in addition to the period of suspension
4 mandated by 18 U.S.C. 2015(b)(1).

5 F. The court may permit such individual to perform work approved by the court for the purpose
6 of providing restitution for losses incurred by the United States and the State agency as a
7 result of the offense for which such individual was convicted. If the court permits such
8 individual to perform such work and such individual agrees thereto, the court shall withhold
9 the imposition of the sentence on the condition that such individual perform the assigned
10 work. Upon the successful completion of the assigned work the court may suspend such
11 sentence.” 18 U.S.C. 2024(b)(2).

12 IV

13 **DEFENDANT’S WAIVER OF TRIAL RIGHTS**
AND UNDERSTANDING OF CONSEQUENCES

14 This guilty plea waives Defendant’s right at trial to:

- 15 A. Continue to plead not guilty and require the Government to prove the elements of the crime
- 16 beyond a reasonable doubt;
- 17 B. A speedy and public trial by jury;
- 18 C. The assistance of counsel at all stages of trial;
- 19 D. Confront and cross-examine adverse witnesses;
- 20 E. Testify and present evidence and to have witnesses testify on behalf of defendant; and
- 21 F. Not testify or have any adverse inferences drawn from the failure to testify.

22 V

23 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE**
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

24 Any information establishing the factual innocence of Defendant known to the undersigned
25 prosecutor in this case has been turned over to Defendant. The Government will continue to provide such
26 information establishing the factual innocence of Defendant.

27 If this case proceeded to trial, the Government would be required to provide impeachment
28 information for its witnesses. In addition, if Defendant raised an affirmative defense, the Government

1 would be required to provide information in its possession that supports such a defense. By pleading guilty,
2 defendant will not be provided this information, if any, and Defendant waives any right to this information.
3 Defendant will not attempt to withdraw the guilty plea or file a collateral attack on the existence of this
4 information.

5 VI

6 **DEFENDANT'S REPRESENTATION THAT GUILTY**
7 **PLEA IS KNOWING AND VOLUNTARY**

8 Defendant represents that:

- 9 A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case
10 with defense counsel and has a clear understanding of the charges and the consequences of
11 this plea. By pleading guilty, Defendant may be giving up, and rendered ineligible to
12 receive, valuable government benefits and civic rights, such as the right to vote, the right to
13 possess a firearm, the right to hold office, and the right to serve on a jury. The conviction in
14 this case may subject Defendant to various collateral consequences, including but not
15 limited to revocation of probation, parole, or supervised release in another case; debarment
16 from government contracting; and suspension or revocation of a professional license, none
17 of which can serve as grounds to withdraw Defendant's guilty plea;
- 18 B. No one has made any promises or offered any rewards in return for this guilty plea, other
19 than those contained in this agreement or otherwise disclosed to the court;
- 20 C. No one has threatened Defendant or Defendant's family to induce this guilty plea; and,
- 21 D. Defendant is pleading guilty because Defendant is guilty and for no other reason.

22 VII

23 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE,**
24 **SOUTHERN DISTRICT OF CALIFORNIA**

25 This plea agreement is limited to the United States Attorney's Office for the Southern District of
26 California, and cannot bind any other authorities in any type of matter, although the Government will bring
27 this plea agreement to the attention of other authorities if requested by Defendant.

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VIII

APPLICABILITY OF SENTENCING GUIDELINES

The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). In imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory. The Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. The sentence cannot be determined until a presentence report is prepared by the U.S. Probation Office and defense counsel and the Government have an opportunity to review and challenge the presentence report.

Defendant agrees to request that a presentence report be prepared. Nothing in this plea agreement limits the Government’s duty to provide complete and accurate facts to the District Court and the U.S. Probation Office.

IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The sentence is within the sole discretion of the sentencing judge who may impose the maximum sentence provided by statute. It is uncertain at this time what Defendant’s sentence will be. The Government has not made and will not make any representation as to what sentence Defendant will receive. Any estimate of the probable sentence by defense counsel is not a promise and is not binding on the Court. Any recommendation made by the Government at sentencing is also not binding on the Court. If the sentencing judge does not follow any of the parties’ sentencing recommendations, Defendant will not withdraw the plea.

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PARTIES’ SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the Guidelines are only advisory and just one factor the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments, and Departures:

1 Forced Labor:

2	1.	Base offense level [USSG § 2H4.1(a)]:	22
3	2.	Minimal Role [§ 3B1.2(a)]	-4
4	3.	Acceptance of Responsibility [§ 3E1.1]	-3
5	4.	Reckless Disregard*	<u>-4</u>
6		Adjusted Offense Level:	11

7 **The Guideline commentary advises that a downward departure may be warranted where*
 8 *a defendant is convicted under § 1589(b) under the theory that the defendant benefitted*
 9 *from participating in a venture without knowing (i.e., only being in reckless disregard of*
 9 *the fact that) the venture had engaged in forced labor.*

10 Benefits Fraud (grouped pursuant to § 3D1.2):

11	1.	Base offense level [USSG § 2B1.1(a)]:	6 (if loss <\$5K)
12	2.	Acceptance of Responsibility [§ 3E1.1]	<u>-2</u>
13		Adjusted Offense Level:	4

14 B. ACCEPTANCE OF RESPONSIBILITY

15 Despite Paragraph A above, the Government need not recommend an adjustment for Acceptance
 16 of Responsibility if Defendant engages in conduct inconsistent with acceptance of responsibility including,
 17 but not limited to, the following:

- 18 1. Fails to truthfully admit a complete factual basis as stated in the plea at the time the
 19 plea is entered, or falsely denies, or makes a statement inconsistent with, the factual
 20 basis set forth in this agreement;
- 21 2. Falsely denies prior criminal conduct or convictions;
- 22 3. Is untruthful with the Government, the Court or probation officer; or
- 23 4. Breaches this plea agreement in any way.

24 C. UNDER 18 U.S.C. § 3553

25 Defendant may request or recommend additional downward adjustments, departures, or variances
 26 from the Sentencing Guidelines under 18 U.S.C. § 3553.

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1 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

2 The parties have no agreement as to Defendant’s Criminal History Category, except that, if
3 Defendant is determined to be a Career Offender, the parties agree that the Defendant is automatically a
4 Criminal History Category VI pursuant to USSG § 4B1.1(b).

5 E. “FACTUAL BASIS” AND “RELEVANT CONDUCT” INFORMATION

6 The facts in the “factual basis” paragraph of this agreement are true and may be considered as
7 “relevant conduct” under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C.
8 § 3553(a)(1).

9 F. PARTIES’ RECOMMENDATIONS REGARDING CUSTODY

10 The Government agrees to recommend a sentence at the low end of the Guidelines, as calculated
11 by the Government.

12 G. SUPERVISED RELEASE

13 If the Court imposes a term of supervised release, Defendant will not seek to reduce or terminate
14 early the term of supervised release until Defendant has served at least two-thirds of the term of supervised
15 release and has fully paid and satisfied any special assessments, fine, criminal forfeiture judgment and
16 restitution judgment.

17 **XI**

18 **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

19 Defendant waives (gives up) all rights to appeal and to collaterally attack every aspect of the
20 conviction and sentence. This waiver includes, but is not limited to, any argument that the statute of
21 conviction or Defendant’s prosecution is unconstitutional and any argument that the facts of this case do
22 not constitute the crime charged. The only exceptions are: (i) Defendant may appeal a custodial sentence
23 above six months; and (ii) Defendant may collaterally attack the conviction or sentence on the basis that
24 Defendant received ineffective assistance of counsel. If Defendant appeals, the Government may support
25 on appeal the sentence or restitution order actually imposed.

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XII

BREACH OF THE PLEA AGREEMENT

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3 Defendant and Defendant’s attorney know the terms of this agreement and shall raise, before the
4 sentencing hearing is complete, any claim that the Government has not complied with this agreement.
5 Otherwise, such claims shall be deemed waived (that is, deliberately not raised despite awareness that the
6 claim could be raised), cannot later be made to any court, and if later made to a court, shall constitute a
7 breach of this agreement.

8 Defendant breaches this agreement if Defendant violates or fails to perform any obligation under
9 this agreement. The following are non-exhaustive examples of acts constituting a breach:

- 10 A. Failing to plead guilty pursuant to this agreement;
- 11 B. Failing to fully accept responsibility as established in Section X, paragraph B, above;
- 12 C. Failing to appear in court;
- 13 D. Attempting to withdraw the plea;
- 14 E. Failing to abide by any court order related to this case;
- 15 F. Appealing (which occurs if a notice of appeal is filed) or collaterally attacking the
16 conviction or sentence in violation of Section XI of this plea agreement; or
- 17 G. Engaging in additional criminal conduct from the time of arrest until the time of sentencing.

18 If Defendant breaches this plea agreement, Defendant will not be able to enforce any provisions,
19 and the Government will be relieved of all its obligations under this plea agreement. For example, the
20 Government may proceed to sentencing but recommend a different sentence than what it agreed to
21 recommend above. Or the Government may pursue any charges including those that were dismissed,
22 promised to be dismissed, or not filed as a result of this agreement (Defendant agrees that any statute of
23 limitations relating to such charges is tolled indefinitely as of the date all parties have signed this agreement;
24 Defendant also waives any double jeopardy defense to such charges). In addition, the Government may
25 move to set aside Defendant’s guilty plea. Defendant may not withdraw the guilty plea based on the
26 Government’s pursuit of remedies for Defendant’s breach.

27 Additionally, if Defendant breaches this plea agreement: (i) any statements made by Defendant,
28 under oath, at the guilty plea hearing (before either a Magistrate Judge or a District Judge); (ii) the factual

1 basis statement in Section II.B in this agreement; and (iii) any evidence derived from such statements, are
2 admissible against Defendant in any prosecution of, or any action against, defendant. This includes the
3 prosecution of the charge(s) that is the subject of this plea agreement or any charge(s) that the prosecution
4 agreed to dismiss or not file as part of this agreement, but later pursues because of a breach by the
5 Defendant. Additionally, Defendant knowingly, voluntarily, and intelligently waives any argument that the
6 statements and any evidence derived from the statements should be suppressed, cannot be used by the
7 Government, or are inadmissible under the United States Constitution, any statute, Rule 410 of the Federal
8 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, and any other federal rule.

9 **XIII**

10 **CONTENTS AND MODIFICATION OF AGREEMENT**

11 This plea agreement embodies the entire agreement between the parties and supersedes any other
12 agreement, written or oral. No modification of this plea agreement shall be effective unless in writing
13 signed by all parties.

14 **XIV**

15 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

16 By signing this agreement, Defendant certifies that Defendant has read it (or that it has been read
17 to Defendant in Defendant's native language). Defendant has discussed the terms of this agreement with
18 defense counsel and fully understands its meaning and effect.

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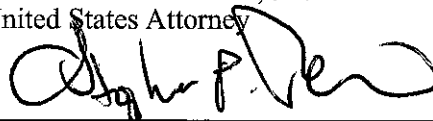
XV

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and Defendant's counsel did not advise Defendant about what to say in this regard.

Respectfully submitted,

ROBERT S. BREWER, JR.
United States Attorney



CHRISTOPHER P. TENORIO
Assistant U.S. Attorney

2/25/20

DATED

2/25/2020

DATED



BENJAMIN J. CHEEKS
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

02-25-2020

DATED



JOSE GAYTAN
Defendant

Approved by:



ANDREW R. HADEN
Chief, Violent Crimes & Human Trafficking Section