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1 NICOLA T. HANNA
 United States Attorney
 2 BRANDON D. FOX
 Assistant United States Attorney
 3 Chief, Criminal Division
 RICHARD E. ROBINSON (Cal. Bar No. 090840)
 4 KATHERINE A. RYKKEN (Cal. Bar No. 267196)
 Assistant United States Attorneys
 5 Major Frauds Section
 1100 United States Courthouse
 6 312 North Spring Street
 Los Angeles, California 90012
 7 Telephone: (213) 894-0713; (213) 894-3659
 Facsimile: (213) 894-6269
 8 E-mail: Richard.Robinson@usdoj.gov
 Katherine.Rykken@usdoj.gov

BY: _____
 CLERK U.S. DISTRICT COURT
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9 Attorneys for Plaintiff
 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 STEVE CHEN,
 aka "Li Chen,"
 17 aka "Boss,"

18 Defendant.

No. CR **20CR00089** - JFW
PLEA AGREEMENT FOR DEFENDANT
STEVE CHEN

20 1. Subject to the approval of the Department of Justice, Tax
 21 Division, this constitutes the plea agreement between STEVE CHEN,
 22 also known as ("aka") "Li Chen," aka "Boss" ("defendant"),
 23 and the United States Attorney's Office for the Central District of
 24 California ("the USAO") in the investigation of defendant's
 25 conspiracy to commit wire fraud with respect to defendant's
 26 companies, including USFIA, Inc., and defendant's tax evasion. This
 27 agreement is limited to the USAO and cannot bind any other federal,
 28

1 state, local, or foreign prosecuting, enforcement, administrative, or
2 regulatory authorities.

3 DEFENDANT'S OBLIGATIONS

4 2. Defendant agrees to:

5 a. Give up the right to indictment by a grand jury and,
6 at the earliest opportunity requested by the USAO and provided by the
7 Court, appear and plead guilty to a two-count information in the form
8 attached to this agreement as Exhibit A or a substantially similar
9 form, which charges defendant with conspiracy to commit wire fraud,
10 in violation of 18 U.S.C. § 371, and tax evasion, in violation of 26
11 U.S.C. § 7201.

12 b. Not contest facts agreed to in this agreement.

13 c. Abide by all agreements regarding sentencing contained
14 in this agreement.

15 d. Appear for all court appearances, surrender as ordered
16 for service of sentence, obey all conditions of any bond, and obey
17 any other ongoing court order in this matter.

18 e. Not commit any crime; however, offenses that would be
19 excluded for sentencing purposes under United States Sentencing
20 Guidelines ("U.S.S.G." or "Sentencing Guidelines") §4A1.2(c) are not
21 within the scope of this agreement.

22 f. Be truthful at all times with the United States
23 Probation and Pretrial Services Office and the Court.

24 g. Pay the applicable special assessments at or before
25 the time of sentencing.

26 h. Authorize the USAO to obtain a credit report
27 immediately upon defendant's entry of his guilty pleas.

28

1 i. Consent to the USAO inspecting and copying all of
2 defendant's financial documents and financial information held by the
3 United States Probation and Pretrial Services Office.

4 j. Complete the Financial Disclosure Statement on a form
5 provided by the USAO and, within 30 days of defendant's entry of his
6 guilty pleas, deliver the signed and dated statement, along with all
7 of the documents requested therein, to the USAO by either email at
8 usacac.FinLit@usdoj.gov or mail to the USAO Financial Litigation
9 Section at 300 N. Los Angeles St., Suite 7516, Los Angeles, CA 90012.

10 3. Defendant admits that:

11 a. Defendant received \$4,816,193 of income that defendant
12 should have but did not report on his Amended U.S. Individual Income
13 Tax Return, Form 1040X, for calendar year 2014; and

14 b. Defendant signed and caused to be filed his U.S.
15 Individual Income Tax Return, Form 1040, for calendar year 2015, on
16 which return defendant expressly (i) declined to disclose the amounts
17 of ordinary and qualified dividend income (Form 1040 lines 9a, 9b)
18 and other income (Form 1040 line 21) defendant received; and (ii)
19 declined to calculate tax with regard to such non-disclosed items.

20 4. Defendant agrees to cooperate with the Internal Revenue
21 Service in the determination of defendant's tax liability for the tax
22 years subject to the above admissions. Defendant further agrees
23 that:

24 a. Defendant will file, prior to the time of sentencing,
25 amended returns for the tax years subject to the above admissions,
26 correctly reporting unreported income; will, if requested to do so by
27 the Internal Revenue Service, provide the Internal Revenue Service
28 with information regarding the years covered by the returns; will pay

1 at or before sentencing all additional taxes and all penalties and
2 interest assessed by the Internal Revenue Service on the basis of the
3 returns, unless defendant lacks the ability to do so and prior to
4 sentencing furnishes the Internal Revenue Services with a completed,
5 signed IRS collection information statement (IRS Form 433-F) or a
6 substantially similar financial disclosure form; and will promptly
7 pay all additional taxes and all penalties and interest thereafter
8 determined by the Internal Revenue Service to be owing as a result of
9 any computational error(s).

10 b. Nothing in this agreement forecloses or limits the
11 ability of the Internal Revenue Service to examine and make
12 adjustments to defendant's returns after they are filed.

13 c. Defendant will not, after filing the returns, file any
14 claim for refund of taxes, penalties, or interest for amounts
15 attributable to the returns filed in connection with this agreement.

16 d. Defendant is liable for the fraud penalty imposed by
17 the Internal Revenue Code, 26 U.S.C. § 6663, on the understatement of
18 tax liability for tax year 2014.

19 e. Defendant gives up any and all objections that could
20 be asserted to the Examination Division of the Internal Revenue
21 Service receiving materials or information obtained during the
22 criminal investigation of this matter, including materials and
23 information obtained through grand jury subpoenas.

24 f. Defendant will sign a closing agreement with the
25 Internal Revenue Service contemporaneously with the signing of this
26 agreement, permitting the Internal Revenue Service to assess and
27 collect the total sum of \$1,885,094, for defendant's tax year 2014,
28 which comprises the tax liability, as well as to assess and collect

1 the civil fraud penalty for tax year 2014 and statutory interest, on
2 the tax liability, as provided by law.

3 THE USAO'S OBLIGATIONS

4 5. The USAO agrees to:

5 a. Not contest facts agreed to in this agreement.

6 b. Abide by all agreements regarding sentencing contained
7 in this agreement.

8 c. At the time of sentencing, provided that defendant
9 demonstrates an acceptance of responsibility for the offenses up to
10 and including the time of sentencing, recommend a two-level reduction
11 in the applicable Sentencing Guidelines offense level, pursuant to
12 U.S.S.G. §3E1.1, and recommend and, if necessary, move for an
13 additional one-level reduction if available under that section.

14 d. Not further criminally prosecute defendant for
15 violations of Titles 8, 18, and 26 of the United States Code, arising
16 out of defendant's conduct described in the agreed-to factual basis
17 set forth in Exhibit B attached hereto. Defendant understands that
18 the USAO is free to criminally prosecute defendant for any other
19 unlawful past conduct or any unlawful conduct that occurs after the
20 effective date of this agreement. Defendant agrees that at the time
21 of sentencing the Court may consider any uncharged conduct in
22 determining the applicable Sentencing Guidelines range, the propriety
23 and extent of any departure from that range, and the sentence to be
24 imposed after consideration of the Sentencing Guidelines and all
25 other relevant factors under 18 U.S.C. § 3553(a).

26 NATURE OF THE OFFENSES

27 6. Defendant understands that for defendant to be guilty of
28 the crime charged in count one of the information, that is,

1 conspiracy to commit wire fraud, in violation of Title 18, United
2 States Code, Section 371, the following must be true:

3 First, beginning by at least in or about July 2013 and
4 continuing through at least in or about September 2015, there was an
5 agreement between two or more persons to commit the crime of wire
6 fraud, in violation of Title 18, United States Code, Section 1343;

7 Second, defendant became a member of the conspiracy knowing of
8 its object and intending to help accomplish it; and

9 Third, one of the members of the conspiracy performed at least
10 one overt act for the purpose of carrying out the conspiracy.

11 7. The conspiracy to which defendant has agreed to plead
12 guilty involves an agreement to commit the substantive offense of
13 wire fraud (18 U.S.C. § 1343). The elements of this substantive
14 offense are as follows:

15 First, defendant knowingly participated in a scheme or plan to
16 defraud, or a scheme or plan for obtaining money or property by means
17 of false or fraudulent pretenses, representations, promises or
18 omitted facts;

19 Second, the statements made or facts omitted as part of the
20 scheme were material; that is, they had a natural tendency to
21 influence, or were capable of influencing, a person to part with
22 money or property;

23 Third, defendant acted with intent to defraud, that is, the
24 intent to deceive or cheat; and

25 Fourth, defendant used, or caused to be used, an interstate or
26 foreign wire communication to carry out or attempt to carry out an
27 essential part of the scheme.

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1 8. Defendant understands that for defendant to be guilty of
2 the crime charged in count two of the information, that is, tax
3 evasion, in violation of Title 26, United States Code, Section 7201,
4 the following must be true:

5 First, defendant owed more federal income tax for the calendar
6 year 2014 than was declared due on the defendant's income tax return
7 for calendar year 2014;

8 Second, defendant knew that he owed more federal income tax for
9 calendar year 2014 than was declared due on the defendant's income
10 tax return for calendar year 2014;

11 Third, defendant made an affirmative attempt to evade or defeat
12 such additional tax; and

13 Fourth, in attempting to evade or defeat such additional tax,
14 defendant acted willfully, that is, defendant, knowing that federal
15 tax law imposed a duty on him, acted intentionally and voluntarily to
16 violate that duty.

17 PENALTIES AND RESTITUTION

18 9. Defendant understands that the statutory maximum sentence
19 that the Court can impose for a violation of Title 18, United States
20 Code, Section 371, is: 5 years' imprisonment; a 3-year period of
21 supervised release; a fine of \$250,000 or twice the gross gain or
22 gross loss resulting from the offense, whichever is greatest; and a
23 mandatory special assessment of \$100.

24 10. Defendant understands that the statutory maximum sentence
25 that the Court can impose for a violation of Title 26, United States
26 Code, Section 7201, is: 5 years' imprisonment; a 3-year period of
27 supervised release; a fine of \$250,000 or twice the gross gain or
28 gross loss resulting from the offense, whichever is greatest; payment

1 of the costs of prosecution, which is mandatory; and a mandatory
2 special assessment of \$100.

3 11. Defendant understands, therefore, that the total maximum
4 sentence for both offenses to which defendant is pleading guilty is:
5 10 years' imprisonment; a 3-year period of supervised release; a fine
6 of \$500,000 or twice the gross gain or gross loss resulting from the
7 offenses, whichever is greatest; the costs of prosecution for
8 defendant's tax evasion offense, and a mandatory special assessment
9 of \$200.

10 12. Defendant understands that defendant will be required to
11 pay full restitution to the victims of the conspiracy offense to
12 which defendant is pleading guilty. Defendant agrees that, in return
13 for the USAO's compliance with its obligations under this agreement,
14 the Court may order restitution to persons other than the victims of
15 the conspiracy offense to which defendant is pleading guilty, for
16 losses suffered by those persons as a result of: (a) any relevant
17 conduct, as defined in U.S.S.G. §1B1.3, in connection with the
18 conspiracy offense to which defendant is pleading guilty; and (b) any
19 charges not prosecuted pursuant to this agreement as well as all
20 relevant conduct, as defined in U.S.S.G. §1B1.3, in connection with
21 those charges. The parties currently believe that the applicable
22 amount of restitution is at least \$112 million, but recognize and
23 agree that this amount could change based on facts that come to the
24 attention of the parties prior to sentencing. The parties
25 acknowledge that, pursuant to 18 U.S.C. § 3664(j)(2)(A), defendant
26 may receive credit against the amount of restitution owed for any
27 amount the Receiver has paid to a victim of the conspiracy offense to
28 which defendant is pleading guilty as compensatory damages for the

1 same loss by that victim in Securities and Exchange Commission v.
2 Steve Chen, et al., Case No. 2:15-CV-07425-RGK.

3 13. Defendant understands and agrees that the Court: (a) may
4 order defendant to pay restitution in the form of any additional
5 taxes, interest, and penalties that defendant owes to the United
6 States based upon the tax evasion count of conviction and any
7 relevant conduct; and (b) must order defendant to pay the costs of
8 prosecution, which may be in addition to the statutory maximum fine
9 stated above.

10 14. Defendant agrees that any and all fines and/or restitution
11 ordered by the Court will be due immediately. The government is not
12 precluded from pursuing, in excess of any payment schedule set by the
13 Court, any and all available remedies by which to satisfy defendant's
14 payment of the full financial obligation, including referral to the
15 Treasury Offset Program.

16 15. Defendant understands that supervised release is a period
17 of time following imprisonment during which defendant will be subject
18 to various restrictions and requirements. Defendant understands that
19 if defendant violates one or more of the conditions of any supervised
20 release imposed, defendant may be returned to prison for all or part
21 of the term of supervised release authorized by statute for the
22 offense that resulted in the term of supervised release, which could
23 result in defendant serving a total term of imprisonment greater than
24 the statutory maximum stated above.

25 16. Defendant understands that, by pleading guilty, defendant
26 may be giving up valuable government benefits and valuable civic
27 rights, such as the right to vote, the right to possess a firearm,
28 the right to hold office, and the right to serve on a jury.

1 Defendant understands that he is pleading guilty to a felony and that
2 it is a federal crime for a convicted felon to possess a firearm or
3 ammunition. Defendant understands that the convictions in this case
4 may also subject defendant to various other collateral consequences,
5 including but not limited to revocation of probation, parole, or
6 supervised release in another case and suspension or revocation of a
7 professional license. Defendant understands that unanticipated
8 collateral consequences will not serve as grounds to withdraw
9 defendant's guilty pleas.

10 17. Defendant understands that, if defendant is not a United
11 States citizen, the felony convictions in this case may subject
12 defendant to: removal, also known as deportation, which may, under
13 some circumstances, be mandatory; denial of citizenship; and denial
14 of admission to the United States in the future. The Court cannot,
15 and defendant's attorney also may not be able to, advise defendant
16 fully regarding the immigration consequences of the felony
17 convictions in this case. Defendant understands that unexpected
18 immigration consequences will not serve as grounds to withdraw
19 defendant's guilty pleas.

20 FACTUAL BASIS

21 18. Defendant admits that defendant is, in fact, guilty of the
22 offenses to which defendant is agreeing to plead guilty. Defendant
23 and the USAO agree to the statement of facts set forth in Exhibit B
24 to this agreement, and agree that this statement of facts is
25 sufficient to support pleas of guilty to the charges described in
26 this agreement and to establish the Sentencing Guidelines factors set
27 forth in paragraph 20, but is not meant to be a complete recitation
28

1 of all facts relevant to the underlying criminal conduct or all facts
2 known to either party that relate to that conduct.

3 SENTENCING FACTORS

4 19. Defendant understands that in determining defendant's
5 sentence the Court is required to calculate the applicable Sentencing
6 Guidelines range and to consider that range, possible departures
7 under the Sentencing Guidelines, and the other sentencing factors set
8 forth in 18 U.S.C. § 3553(a). Defendant understands that the
9 Sentencing Guidelines are advisory only, that defendant cannot have
10 any expectation of receiving a sentence within the calculated
11 Sentencing Guidelines range, and that after considering the
12 Sentencing Guidelines and the other § 3553(a) factors, the Court will
13 be free to exercise its discretion to impose any sentence it finds
14 appropriate up to the maximum set by statute for the crimes of
15 conviction.

16 20. Defendant and the USAO agree to the following applicable
17 Sentencing Guidelines factors:

18 Count One: 18 U.S.C. § 371

19 Base Offense Level:	7	[U.S.S.G. §2B1.1(a)(1)]
20 Specific Offense 21 Characteristics:		
22 Loss of more than \$65 23 million, less than \$150 24 million	+24	[U.S.S.G. §2B1.1(b)(1)(M)]
25 10 or more victims	+2	[U.S.S.G. §2B1.1(b)(2)(A)]
26 Sophisticated means	+2	[U.S.S.G. §2B1.1(b)(10)(C)]
27 Leader role in the offense	+4	[U.S.S.G. §3B1.1(A)]
28 Offense Level:	<u>39</u>	

1	<u>Count Two: 26 U.S.C. § 7201</u>	
2	Base Offense Level:	
3	Tax loss more than \$1.5	
4	million, less than \$3.5	
	million	22 [U.S.S.G. §§2T1.1(a)(1), 2T4.1(I)]
5	Specific Offense	
6	Characteristics:	
7	Failure to report income	
8	exceeding \$10,000 from	
	criminal activity	+2 [U.S.S.G. §2T1.1(b)(1)]
9	Sophisticated means	+2 [U.S.S.G. §2T1.1(b)(2)]
10	Offense Level:	<u>26</u>
11	Total Combined Offense Level:	39 [U.S.S.G. §§3D1.1; 3D1.4(c)]
12	Acceptance of Responsibility:	-3 [U.S.S.G. §3E1.1(b)]
13	<u>Total Adjusted Offense Level:</u>	<u>36</u>
14	<u>Guidelines Sentence:</u>	<u>120 mos.</u> [U.S.S.G. §5G1.1(a)]

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16 21. The USAO will agree to a two-level downward adjustment for

17 acceptance of responsibility (and, if applicable, move for an

18 additional one-level downward adjustment under U.S.S.G. §3E1.1(b))

19 only if the conditions set forth in paragraph 5.c are met and if

20 defendant has not committed, and refrains from committing, acts

21 constituting obstruction of justice within the meaning of U.S.S.G.

22 §3C1.1, as discussed below. Subject to paragraph 35 below, defendant

23 and the USAO agree not to seek, argue, or suggest in any way, either

24 orally or in writing, that any other specific offense

25 characteristics, adjustments, or departures relating to the offense

26 level be imposed. Defendant agrees, however, that if, after signing

27 this agreement but prior to sentencing, defendant were to commit an

28 act, or the USAO were to discover a previously undiscovered act

1 committed by defendant prior to signing this agreement, which act, in
2 the judgment of the USAO, constituted obstruction of justice within
3 the meaning of U.S.S.G. §3C1.1, the USAO would be free to seek the
4 enhancement set forth in that section and to argue that defendant is
5 not entitled to a downward adjustment for acceptance of
6 responsibility under U.S.S.G. §3E1.1.

7 22. Defendant understands that there is no agreement as to
8 defendant's criminal history or criminal history category.

9 23. Defendant and the USAO reserve the right to argue for a
10 sentence outside the sentencing range established by the Sentencing
11 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
12 (a)(2), (a)(3), (a)(6), and (a)(7), with the exception that defendant
13 agrees not to argue that the Sentencing Guidelines should be
14 disregarded, discounted, or minimized, including because the Fraud
15 Guidelines under U.S.S.G. §2B1.1 and subsequent amendments are not
16 based on empirical evidence or national experience, or, even if so
17 based, fail to properly reflect § 3553(a) considerations even in a
18 mine-run case.

19 WAIVER OF CONSTITUTIONAL RIGHTS

20 24. Defendant understands that by pleading guilty, defendant
21 gives up the following rights:

- 22 a. The right to persist in a plea of not guilty.
23 b. The right to a speedy and public trial by jury.
24 c. The right to be represented by counsel - and if
25 necessary have the Court appoint counsel - at trial. Defendant
26 understands, however, that, defendant retains the right to be
27 represented by counsel - and if necessary have the Court appoint
28 counsel - at every other stage of the proceeding.

1 d. The right to be presumed innocent and to have the
2 burden of proof placed on the government to prove defendant guilty
3 beyond a reasonable doubt.

4 e. The right to confront and cross-examine witnesses
5 against defendant.

6 f. The right to testify and to present evidence in
7 opposition to the charges, including the right to compel the
8 attendance of witnesses to testify.

9 g. The right not to be compelled to testify, and, if
10 defendant chose not to testify or present evidence, to have that
11 choice not be used against defendant.

12 h. Any and all rights to pursue any affirmative defenses,
13 Fourth Amendment or Fifth Amendment claims, and other pretrial
14 motions that have been filed or could be filed.

15 WAIVER OF STATUTE OF LIMITATIONS

16 25. Having been fully advised by defendant's attorney
17 regarding application of the statute of limitations to the offenses
18 to which defendant is pleading guilty, defendant hereby knowingly,
19 voluntarily, and intelligently waives, relinquishes, and gives up:
20 (a) any right that defendant might have not to be prosecuted for the
21 offenses to which defendant is pleading guilty because of the
22 expiration of the statute of limitations for those offenses prior to
23 the filing of the information alleging those offenses; and (b) any
24 defense, claim, or argument defendant could raise or assert that
25 prosecution of the offenses to which defendant is pleading guilty is
26 barred by the expiration of the applicable statute of limitations,
27 pre-indictment delay, or any speedy trial violation.

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WAIVER OF APPEAL OF CONVICTION

26. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty pleas were involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's convictions on the offenses to which defendant is pleading guilty. Defendant understands that this waiver includes, but is not limited to, arguments that the statutes to which defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's pleas of guilty.

LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

27. Defendant agrees that, provided the Court imposes a total term of imprisonment on the counts of conviction that is within the statutory maximum, defendant gives up the right to appeal all of the following: (a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court; (c) the fine imposed by the Court, provided it is within the statutory maximum; (d) to the extent permitted by law, the constitutionality or legality of defendant's sentence, provided it is within the statutory maximum; (e) the amount and terms of any restitution order, provided it requires payment of no more than \$112 million; (f) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (g) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in General Order 18-10 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

1 28. The USAO agrees that, provided (a) all portions of the
2 sentence are at or below the statutory maximum specified above and
3 (b) the Court imposes a term of imprisonment of no less than 120
4 months, the USAO gives up its right to appeal any portion of the
5 sentence, with the exception that the USAO reserves the right to
6 appeal the amount of restitution ordered if that amount is less than
7 \$112 million.

8 RESULT OF WITHDRAWAL OF GUILTY PLEAS

9 29. Defendant agrees that if, after entering guilty pleas
10 pursuant to this agreement, defendant seeks to withdraw and succeeds
11 in withdrawing either or both of defendant's guilty pleas on any
12 basis other than a claim and finding that entry into this agreement
13 was involuntary, then (a) the USAO will be relieved of all of its
14 obligations under this agreement; and (b) should the USAO choose to
15 pursue any charge or any civil, administrative, or regulatory action
16 that was not filed as a result of this agreement, then (i) any
17 applicable statute of limitations will be tolled between the date of
18 defendant's signing this agreement and the filing commencing any such
19 action; and (ii) defendant waives and gives up all defenses based on
20 the statute of limitations, any claim of pre-indictment delay, or any
21 speedy trial claim with respect to any such action, except to the
22 extent that such defenses existed as of the date of defendant's
23 signing of this agreement.

24 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

25 30. Defendant agrees that if either count of conviction is
26 vacated, reversed, or set aside, the USAO may: (a) ask the Court to
27 resentence defendant on the remaining count of conviction, with both
28 the USAO and defendant being released from any stipulations regarding

1 sentencing contained in this agreement, (b) ask the Court to void the
2 entire plea agreement and vacate defendant's guilty plea on the
3 remaining count of conviction, with both the USAO and defendant being
4 released from all their obligations under this agreement, or
5 (c) leave defendant's remaining conviction, sentence, and plea
6 agreement intact. Defendant agrees that the choice among these three
7 options rests in the exclusive discretion of the USAO.

8 EFFECTIVE DATE OF AGREEMENT

9 31. This agreement is effective upon signature and execution of
10 all required certifications by defendant, defendant's counsel, and an
11 Assistant United States Attorney.

12 BREACH OF AGREEMENT

13 32. Defendant agrees that if defendant, at any time after the
14 effective date of this agreement, knowingly violates or fails to
15 perform any of defendant's obligations under this agreement ("a
16 breach"), the USAO may declare this agreement breached. All of
17 defendant's obligations are material, a single breach of this
18 agreement is sufficient for the USAO to declare a breach, and
19 defendant shall not be deemed to have cured a breach without the
20 express agreement of the USAO in writing. If the USAO declares this
21 agreement breached, and the Court finds such a breach to have
22 occurred, then:

23 a. If defendant has previously entered guilty pleas
24 pursuant to this agreement, defendant will not be able to withdraw
25 the guilty pleas.

26 b. The USAO will be relieved of all its obligations under
27 this agreement; in particular, the USAO: (i) will no longer be bound
28 by any agreements concerning sentencing and will be free to seek any

1 sentence up to the statutory maximum for the crimes to which
2 defendant has pleaded guilty; and (ii) will no longer be bound by any
3 agreements regarding criminal prosecution, and will be free to
4 criminally prosecute defendant for any crime, including charges that
5 the USAO would otherwise have been obligated not to criminally
6 prosecute pursuant to this agreement.

7 33. Following the Court's finding of a knowing breach of this
8 agreement by defendant, should the USAO choose to pursue any charge
9 or any civil, administrative, or regulatory action that was not filed
10 as a result of this agreement, then:

11 a. Defendant agrees that any applicable statute of
12 limitations is tolled between the date of defendant's signing this
13 agreement and the filing commencing any such action.

14 b. Defendant waives and gives up all defenses based on
15 the statute of limitations, any claim of pre-indictment delay, or any
16 speedy trial claim with respect to any such action, except to the
17 extent that such defenses existed as of the date of defendant's
18 signing this agreement.

19 c. Defendant agrees that: (i) any statements made by
20 defendant, under oath, at the guilty plea hearing (if such a hearing
21 occurred prior to the breach); (ii) the agreed to factual basis
22 statement in this agreement; and (iii) any evidence derived from such
23 statements, shall be admissible against defendant in any such action
24 against defendant, and defendant waives and gives up any claim under
25 the United States Constitution, any statute, Rule 410 of the Federal
26 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
27 Procedure, or any other federal rule, that the statements or any
28 evidence derived from the statements should be suppressed or are