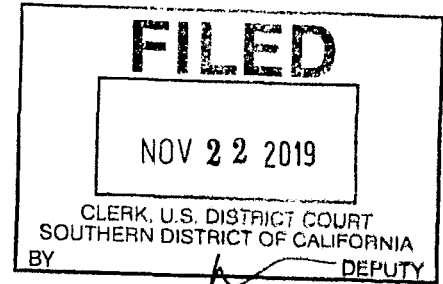


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Acting Under Authority  
Conferred by 28 U.S.C. § 515  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRED MAGANA,

Defendant.

Case No.

19cr 4768 GPC-4

PLEA AGREEMENT

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, Peter J. Mazza, Attorney for the United States Acting Under Authority Conferred by 28 U.S.C. § 515, Nicholas W. Pilchak and Andrew R. Haden, Assistant United States Attorneys, and defendant, FRED MAGANA, with the advice and consent of Ezekiel Cortez, counsel for defendant, as follows:

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Plea Agreement

Def. Initials

I

THE PLEA

Defendant agrees to plead guilty to Count One of the Indictment charging defendant with Aiding and Abetting Engaging in the Business of Dealing in Firearms Without a License, in violation of violation of Title 18, United States Code, Sections 922(a)(1)(A), 923(a), 924(a)(1)(D), and 2.

In exchange for entering a plea pursuant to this agreement, the United States agrees to (1) move to dismiss the remaining charges against Defendant without prejudice when Defendant is sentenced, and (2) not prosecute Defendant thereafter on such dismissed charges, unless Defendant breaches the plea agreement or if Defendant's guilty plea is set aside for any reason. If Defendant breaches this agreement or his guilty plea is set aside, section XII below shall apply.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

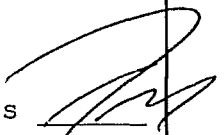
Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. Someone else was willfully engaged in the business of dealing in firearms without a license.
2. The defendant aided, counseled, commanded, induced or procured that person with respect to at least one element of engaging in the business of dealing in firearms without a license;
3. The defendant acted with the intent to facilitate engaging in the business of dealing in firearms without a license; and
4. The defendant acted before the crime was completed.

Plea Agreement

2

Def. Initials



1 In turn, the elements of engaging in the business of dealing in  
2 firearms without a license are:

- 3
- 4 1. The defendant was willfully engaged in the business of dealing
  - 5 in firearms within the dates specified in the indictment; and
  - 6 2. The defendant did not then have a license as a firearms
  - 7 dealer.

8 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

9 Defendant has fully discussed the facts of this case with defense  
10 counsel. Defendant has committed each of the elements of the crimes,  
11 and admits that there is a factual basis for this guilty plea. The  
12 following facts are true and undisputed:

- 13 1. Between October 19, 2001, and February 13, 2019, the  
14 Defendant was a Deputy with the San Diego County Sheriff's  
15 Department ("SDCSD"), eventually holding the rank of  
16 Lieutenant. During that time, Defendant had both a  
professional and personal relationship with M. Marco Garmo  
("Garmo"), who was then a Captain at the SDCSD.
- 17 2. Defendant agrees that the United States could prove that  
18 beginning no later than March 2013 and continuing until at  
19 least February 13, 2019, Garmo was willfully engaged in  
the business of dealing firearms, and that he did not have  
a license to do so.
- 20 3. Specifically, defendant knew that Garmo was engaged in  
21 selling newer model handguns that California law prohibited  
22 members of the general public from acquiring directly from  
23 manufacturers or Federal Firearms Licensees ("FFLs"),  
commonly known as "off roster" handguns.
- 24 4. After Garmo was disciplined by SDCSD for excessive sale of  
25 off roster handguns in about February 2017, defendant  
26 assisted Garmo by purchasing off roster handguns for an  
27 individual who was not eligible to directly buy the  
28 handguns himself: Leo Hamel. Defendant acquired the  
handguns by falsely claiming that he was their actual  
buyer, in a transaction commonly known as a straw purchase.  
Specifically, on April 24, 2017, at Garmo's direction, the

1 defendant acquired two off roster Walther handguns from  
2 Honey Badger Firearms for Leo Hamel, falsely certifying  
3 that the weapons were for the defendant himself, when in  
4 fact they were always intended to be transferred to Leo  
5 Hamel. Leo Hamel was present for the transaction and paid  
6 for the handguns himself. At the time of this transaction,  
7 Defendant was under Garmo's official supervision at the  
8 Rancho San Diego Substation for the Sheriff's Department.

9  
10 5. Defendant's arrangement with Garmo including taking steps  
11 to conceal the straw nature of the firearm sale.  
12 Specifically, Garmo told the defendant that the two off  
13 roster Walther handguns would stay at Honey Badger Firearms  
14 for five months, whereupon Hamel would return and complete  
15 the private-party-transfer ("PPT") paperwork. Transfer  
16 records show that defendant officially transferred the  
17 Walther handguns to Hamel on September 15, 2017.  
18 Thereafter, Hamel offered defendant a free lifetime  
19 membership to a firearms training facility in exchange for  
20 the opportunity to purchase any off roster firearms that  
21 defendant "accidentally" purchased but didn't like.

22  
23 6. After the completed straw-purchase for Leo Hamel, defendant  
24 volunteered to assist Garmo in additional firearms sales.  
25 Referring to the straw-purchase for Leo Hamel, Garmo wrote  
26 to the defendant "I owe you more than u know bro." The  
27 defendant replied "100% to the mother fucken [sic] end."  
28 Specifically, in an effort to help Garmo sell firearms  
without unwanted scrutiny following his reprimand, the  
defendant wrote to Garmo "Give me a list of the stuff  
[i.e., firearms] you want to sell and I'll pimp it out to  
some homies and [] keep your name out of it until they are  
ready to pull the trigger."

7. Defendant also knew that Garmo had continued his personal  
sale of firearms with the intent of making a profit. On  
October 30, 2017, Garmo wrote an email to the defendant  
notifying him of a firearm dealer's law enforcement  
promotion selling off roster Beretta APX pistols for \$490  
apiece with three extra magazines. Specifically, Garmo  
wrote, "Yeah, can't beat it, I am going to sell my other  
one on Armslist." Defendant understood that Garmo was  
buying a second handgun of the same model because he could  
sell the first one and get a favorable price on the second.

8. Defendant agrees that prior to February 13, 2019, he never  
contacted federal law enforcement, or notified any  
supervisor at SDCSD, about Garmo's continued firearm sales  
activities.

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III

PENALTIES

Defendant understands that the crimes to which defendant is pleading guilty carry the following penalties:

- A. a maximum 5 years in prison;
- B. a maximum \$250,000 fine;
- C. a mandatory special assessment of \$100 per count;
- D. a term of supervised release of no more than 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison, upon any such revocation, all or part of the statutory maximum term of supervised release for the offense that resulted in such term of supervised release; and;
- E. forfeiture of all firearms and ammunition involved in the offense.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

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

1 G. Defendant knowingly and voluntarily waives any rights and  
2 defenses defendant may have under the Excessive Fines  
3 Clause of the Eighth Amendment to the United States  
4 Constitution to the forfeiture of property in this  
5 proceeding or any related civil proceeding.

6 V

7  
8 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE**  
9 **PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

10 The Government represents that any information establishing the  
11 factual innocence of defendant known to the undersigned prosecutor in  
12 this case has been turned over to defendant. The Government will  
13 continue to provide such information establishing the factual innocence  
14 of defendant.

15 Defendant understands that if this case proceeded to trial, the  
16 Government would be required to provide impeachment information  
17 relating to any informants or other witnesses. In addition, if defendant  
18 raised an affirmative defense, the Government would be required to  
19 provide information in its possession that supports such a defense.  
20 Defendant acknowledges, however, that by pleading guilty defendant will  
21 not be provided this information, if any, and defendant also waives the  
22 right to this information. Finally, defendant agrees not to attempt to  
23 withdraw the guilty plea or to file a collateral attack based on the  
24 existence of this information.

25 //

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Plea Agreement

VI

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

Defendant represents that:

- A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel and has a clear understanding of the charges and the consequences of this plea. Defendant understands that, by pleading guilty, defendant may be giving up, and rendered ineligible to receive, valuable government benefits and civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. Defendant further understands that the conviction in this case may subject defendant to various collateral consequences, including but not limited to deportation, removal or other adverse immigration consequences; revocation of probation, parole, or supervised release in another case; debarment from government contracting; and suspension or revocation of a professional license, none of which will serve as grounds to withdraw defendant's guilty plea.
- B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement or otherwise disclosed to the Court.
- C. ~~No one has threatened defendant or defendant's family to induce this guilty plea.~~
- D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.

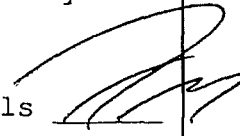
VII

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

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by the defendant.

Plea Agreement

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Def. Initials 

VIII

**APPLICABILITY OF SENTENCING GUIDELINES**

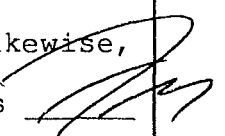
Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and 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. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting 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). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise,

Plea Agreement

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the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

X

**PARTIES' SENTENCING RECOMMENDATIONS**

**A. SENTENCING GUIDELINE CALCULATIONS**

Although the parties understand that the Guidelines are only advisory and just one of the factors 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. Base Offense Level [§ 2K2.1(a)(7)]	12
2. Minor Role [§ 3B1.2]	-2
3. Acceptance of Responsibility [§ 3E1.1]	<u>-2</u>
	8

**B. ACCEPTANCE OF RESPONSIBILITY**

Notwithstanding paragraph A.3 above, the Government will not be obligated to recommend any adjustment for Acceptance of Responsibility if defendant engages in conduct inconsistent with acceptance of responsibility including, but not limited to, the following:

1. Fails to truthfully admit a complete factual basis as stated in the plea at the time the plea is entered, or falsely denies, or makes a statement inconsistent with, the factual basis set forth in this agreement;
2. Falsely denies prior criminal conduct or convictions;

1 3. Is untruthful with the Government, the Court or  
2 probation officer; or

3 4. Materially breaches this plea agreement in any way.

4 5. Contests or assists any third party in contesting the  
5 forfeiture of property(ies) seized in connection with  
6 this case.

7  
8 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING  
9 THOSE UNDER 18 U.S.C. § 3553

10 The parties agree that defendant may request or recommend  
11 additional downward adjustments, departures, including criminal history  
12 departures under USSG § 4A1.3, or sentence reductions under 18 U.S.C.  
13 § 3553. The Government will oppose any such downward adjustments,  
14 departures and sentence reductions not set forth in Section X, paragraph  
15 A above.

16 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

17 The parties have **no** agreement as to defendant's Criminal History  
18 Category.

19 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

20 The parties agree that the facts in the "factual basis" paragraph  
21 of this agreement are true, and may be considered as "relevant conduct"  
22 under USSG § 1B1.3 and as the nature and circumstances of the offense  
23 under 18 U.S.C. § 3553(a)(1).

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1 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

2 The parties agree that the Government will recommend that defendant  
3 be sentenced at the low end of the guidelines range calculated by the  
4 Government pursuant to this plea agreement. If the low end of the  
5 Guidelines range is "0", the United States will recommend a three-year  
6 term of probation.

7 G. SPECIAL ASSESSMENT

8 The parties will jointly recommend that defendant pay a special  
9 assessment in the amount of \$100.00 per felony count of conviction to  
10 be paid forthwith at time of sentencing. The special assessment shall  
11 be paid through the office of the Clerk of the District Court by bank  
12 or cashier's check or money order made payable to the "Clerk, United  
13 States District Court."

14 H. SUPERVISED RELEASE

15 If the Court imposes a term of supervised release, defendant agrees  
16 that he will not later seek to reduce or terminate early the term of  
17 supervised release until he has served at least 2/3 of his term of  
18 supervised release and has fully paid and satisfied any special  
19 assessments, fine, criminal forfeiture judgment and restitution  
20 judgment.

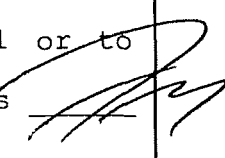
21 XI

22 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

23 In exchange for the Government's concessions in this plea  
24 agreement, defendant waives, to the full extent of the law, any right  
25 to appeal or to collaterally attack the conviction and any lawful  
26 restitution order, except a post-conviction collateral attack based on  
27 a claim of ineffective assistance of counsel. The defendant also  
28 waives, to the full extent of the law, any right to appeal or to

Plea Agreement

11

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1 collaterally attack the sentence, except a post-conviction collateral  
2 attack based on a claim of ineffective assistance of counsel, unless  
3 the Court imposes a custodial sentence above the high end of the  
4 guideline range recommended by the Government pursuant to this agreement  
5 at the time of sentencing, excluding any recommended variance. If the  
6 custodial sentence is greater than the high end of that range, defendant  
7 may appeal, but the Government will be free to support on appeal the  
8 sentence actually imposed. If defendant believes the Government's  
9 recommendation is not in accord with this plea agreement, defendant  
10 will object at the time of sentencing; otherwise the objection will be  
11 deemed waived.

12 If at any time defendant files a notice of appeal, appeals or  
13 collaterally attacks the conviction or sentence in violation of this  
14 plea agreement, said violation shall be a material breach of this  
15 agreement as further defined below.

16 **XII**

17 **BREACH OF THE PLEA AGREEMENT**

18 Defendant acknowledges, understands and agrees that if defendant  
19 violates or fails to perform any of defendant's obligations under this  
20 agreement, such violation or failure to perform may constitute a  
21 material breach of this agreement.

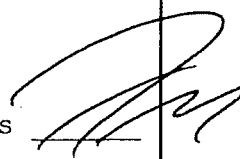
22 Defendant acknowledges, understands and agrees further that the  
23 following non-exhaustive list of conduct by defendant unquestionably  
24 constitutes a material breach of this plea agreement:

- 25 1. Failing to plead guilty pursuant to this agreement;
- 26 2. Failing to fully accept responsibility as established  
27 in Section X, paragraph B, above;
- 28 3. Failing to appear in court;

Plea Agreement

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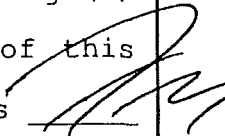


4. Attempting to withdraw the plea;
5. Failing to abide by any lawful court order related to this case;
6. Appealing or collaterally attacking the sentence or conviction in violation of Section XI of this plea agreement; or
7. Engaging in additional criminal conduct from the time of arrest until the time of sentencing.

In the event of defendant's material breach of this plea agreement, defendant will not be able to enforce any of its provisions, and the Government will be relieved of all its obligations under this plea agreement. For example, the Government may pursue any charges including those that were dismissed, promised to be dismissed, or not filed as a result of this agreement (defendant agrees that any statute of limitations relating to such charges is tolled as of the date of this agreement; defendant also waives any double jeopardy defense to such charges). In addition, the Government may move to set aside defendant's guilty plea. Defendant may not withdraw the guilty plea based on the Government's pursuit of remedies for defendant's breach.

Additionally, defendant agrees that in the event of defendant's material breach of this plea agreement: (i) any statements made by defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a District Judge); (ii) the stipulated factual basis statement in this agreement; and (iii) any evidence derived from such statements, are admissible against defendant in any prosecution of, or any action against, defendant. This includes the prosecution of the charge(s) that is the subject of this plea agreement or any charge(s) that the prosecution agreed to dismiss or not file as part of this

Plea Agreement

Def. Initials 

1 agreement, but later pursues because of a material breach by the  
2 defendant. Additionally, defendant knowingly, voluntarily, and  
3 intelligently waives any argument under the United States Constitution,  
4 any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of  
5 the Federal Rules of Criminal Procedure, and/or any other federal rule,  
6 that the statements or any evidence derived from any statements should  
7 be suppressed or are inadmissible.

8 **XIII**

9 **ENTIRE AGREEMENT**

10 This plea agreement embodies the entire agreement between the  
11 parties and supersedes any other agreement, written or oral.

12 **XIV**

13 **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

14 No modification of this plea agreement shall be effective unless  
15 in writing signed by all parties.

16 **XV**

17 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

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

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Plea Agreement

XVI

DEFENDANT SATISFIED WITH COUNSEL

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

PETER J. MAZZA  
Attorney for the United States  
Acting Under Authority  
Conferred by 28 U.S.C. § 515

11/21/2019  
DATED

Nicholas W. Pilchak  
NICHOLAS W. PILCHAK  
ANDREW R. HADEN  
Assistant U.S. Attorneys

11-20-19  
DATED

Ezekiel Cortez  
EZEKIEL CORTEZ  
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" SECTION ABOVE ARE TRUE.

11-20-19  
DATED

Fred Magana  
FRED MAGANA  
Defendant

Plea Agreement

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Def. Initials RM