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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.

LEO JOSEPH HAMEL,

Defendant.

Case No. 19cr4768-GPC-2

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 U.S. Attorneys, and Defendant, LEO JOSEPH HAMEL, through his counsel, Michael Pancer, John Dillon and G. Cole Casey as follows:

I

THE PLEA

Defendant agrees to plead guilty to Count One of an Indictment, charging Defendant with Aiding and Abetting Engaging in the Business of Dealing in Firearms Without a License, in violation of Title 18, United

Def. Initials

if

1 States Code, Sections 922(a)(1)(A), 923(a), 924(a)(1)(D), and 2. In
2 addition, Defendant consents to the forfeiture allegations of the
3 Indictment.

4 In exchange for entering a plea pursuant to this agreement, the
5 United States agrees to (1) move to dismiss the remaining charges
6 against Defendant without prejudice when Defendant is sentenced, and
7 (2) not prosecute Defendant thereafter on such dismissed charges. The
8 only exceptions are if Defendant breaches the terms of this plea
9 agreement or if Defendant's guilty plea is set aside for any reason.
10 If Defendant breaches this agreement or his guilty plea is set aside,
11 section XII below shall apply.

12 II

13 NATURE OF THE OFFENSE

14 A. ELEMENTS EXPLAINED

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

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

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

- 25 1. The person defendant aided and abetted was willfully engaged
26 in the business of dealing in firearms within the dates
specified in the indictment; and
- 27 2. That person did not then have a license as a firearms dealer.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

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

1. Defendant has held multiple Federal Firearms Licenses ("FFLs") from about January 1992 to about July 2019. As an FFL, Defendant received training and information about state and federal laws and regulations applicable to the sale and transfer of firearms. Based on that information, Defendant understood that obtaining firearms by means of false statements and engaging in the business of dealing in firearms without a license was unlawful.
2. Between April 2014 and February 2019, Defendant purchased and otherwise acquired at least eighteen (18) firearms from M. Marco Garmo, who was then a Captain at the San Diego County Sheriff's Department ("SDCSD"). In fact, Defendant bought virtually every gun that Garmo ever offered to him. Most of these firearms were newer model handguns that California law prohibited members of the general public from acquiring directly from manufacturers or FFLs, commonly known as "off roster" handguns.
3. Defendant agrees that the United States could prove that beginning no later than March 2013 and continuing until at 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.
4. Defendant also acquired off roster handguns from Garmo which Garmo himself purchased in transactions falsely certifying that Garmo was the firearm's actual purchaser, when in fact Garmo always intended to resell the firearm to Defendant—transactions commonly known as "straw purchases." Defendant was assisted in this effort by Giovanni Vincenzo Tilotta, the proprietor of FFL Honey Badger Firearms, who was aware of several such straw purchases and processed them nonetheless.
5. Defendant's arrangement with Garmo also included planning with Tilotta to create falsified records to make it appear that Garmo was purchasing firearms on his own behalf, instead of straw purchasing them for Defendant. For example, Defendant emailed Garmo on June 27, 2016 with reference to a straw transaction he sought to process at Honey Badger Firearms: "Gio [Tilotta] asks that we do ordered guns [t]his way. You email him first that you want a Sig Legion and a Walther P99cAS. He will then reply ok. You then go in to

order. You can do right away." On July 7, 2016, Garmo in fact purchased a Sig Sauer Legion P226 9mm handgun bearing serial number 47A141276 from Tilotta's FFL, falsely certifying that he was the actual buyer/transferee of the firearm. Although the firearm was never legally transferred from Garmo to Defendant, Defendant in fact possessed it on February 13, 2019.

6. After Garmo was disciplined by SDCSD for excessive sale of off roster handguns in about February 2017, Defendant and Garmo changed the way in which Garmo supplied Defendant with off roster handguns. Specifically, Garmo stopped transferring the firearms to Defendant in documented private party transfers ("PPTs") through FFLs. Instead, Garmo provided firearms to Defendant purportedly on long-term loan, including purported "loans" in exchange for cash that were sales in all but name. Specifically, Defendant emailed Garmo on March 16, 2018: "I'll stop by Saturday and drop off the money and pick up the guns. If you want to hand write a letter stating I am borrowing them that would be good." Because Garmo and Defendant both understood that the "loan" would be indefinite, Defendant added that the letter should include a "Serial number [but] no date though."
7. Garmo also assisted Defendant in procuring off roster handguns by supplying Defendant with another SDCSD deputy willing to conduct straw purchases on Defendant's behalf: Fred Magana. On April 24, 2017, Magana acquired two off roster Walther handguns bearing serial numbers AR5980 and FCH4067 from Honey Badger Firearms for Defendant, falsely certifying that the weapons were for Magana himself, when in fact they were always intended to be transferred to Defendant. In fact, Defendant was present for the transaction and paid for the handguns himself.
8. Defendant knew that Garmo never possessed an FFL, although he discussed with Garmo the possibility of Garmo acquiring an FFL to facilitate his firearms transfers. By purchasing virtually all of the firearms offered to him by Garmo, as well as firearms that Garmo had straw purchased on his behalf, Defendant admits that he aided and intended to facilitate Garmo's engaging in the business of dealing in firearms without a license.
9. On February 12, 2019, Defendant sold approximately 5,360 rounds of 7.62x39mm ammunition to Garmo.
10. On February 13, 2019, Defendant possessed at least eleven (11) firearms registered to Garmo that Garmo had transferred to him without completing the required PPT paperwork through an FFL.
11. Part of the benefit that Garmo received in exchange for supplying Defendant with off roster firearms that he could not directly acquire himself was the prospect of Defendant's

future support for Garmo's intended campaign for Sheriff of San Diego County.

III

PENALTIES

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

- A. a maximum of 5 years in prison;
- B. a maximum fine of \$250,000;
- C. a mandatory special assessment of \$100;
- D. a term of supervised release of up to 3 years. Failure to comply with any condition of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison, upon revocation, all or part of the statutory maximum term of supervised release;
- E. forfeiture of all firearms and ammunition involved in the offense.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS AND UNDERSTANDING OF CONSEQUENCES

This guilty plea waives Defendant's right at trial 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;
- 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.

V

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

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

If this case proceeded to trial, the United States would be required to provide impeachment information for its witnesses. In addition, if Defendant raised an affirmative defense, the United States would be required to provide information in its possession that supports such a defense. By pleading guilty Defendant will not be provided this information, if any, and Defendant waives any right to this information. Defendant will not attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

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. 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. The conviction in this case may subject Defendant to various collateral consequences, including but not limited to 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 can 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 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 authorities in any type of matter, although the United States will bring this plea agreement to the attention of other authorities if requested by Defendant.

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 United States have an opportunity to review and challenge the presentence report. Nothing in this plea agreement limits the United States' 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 United States has not made and will not make any representation about 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 by the United States at sentencing also is not binding on the Court. If the sentencing judge does not follow any of the parties' sentencing recommendations, Defendant will not withdraw the plea.

X

PARTIES' SENTENCING RECOMMENDATIONSA. 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. Base Offense Level, § 2K2.1(a)(7) | 12 |
| 2. Number of firearms (>8), § 2K2.1(b)(1)(B) | +4 |
| 3. Acceptance of Responsibility, §§ 3E1.1(a)/(b) | <u>-3</u> |
| | 13 |

B. ACCEPTANCE OF RESPONSIBILITY

Despite paragraph A above, the United States need not recommend an 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;
3. Is untruthful with the United States, the Court or probation officer;
4. Breaches this plea agreement in any way; or
5. Transfers or conceals property (or properties) that would otherwise be available for payment of restitution.

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

Defendant may recommend additional downward adjustments, departures, including Criminal History departures under USSG § 4A1.3, or sentence reductions under 18 U.S.C. § 3553. The United States may oppose any such adjustments or departures not set out above.

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

The parties have no agreement as to Defendant's Criminal History Category.

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

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

F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

The United States will recommend that Defendant be sentenced at the low end of the advisory guideline range as calculated by the United States at the time of sentencing.

G. SPECIAL ASSESSMENT/FINE /FORFEITURE

1. Special Assessment

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

2. Fine

The parties have no agreement as to the amount of a fine, if any, to be recommended in this matter.

3. Forfeiture

The parties agree that forfeiture shall be governed by the provisions of the attached forfeiture addendum.

H. SUPERVISED RELEASE

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

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Defendant waives (gives up) all rights to appeal and to collaterally attack every aspect of the conviction and sentence, including any forfeiture or restitution order. The only exceptions are: 1) Defendant may appeal a custodial sentence above the high end of the guideline range

recommended by the United States at sentencing (if USSG § 5G1.1(b) applies, the high end of the range will be the statutorily required mandatory minimum sentence); and 2) Defendant may collaterally attack the conviction or sentence on the basis that Defendant received ineffective assistance of counsel. Defendant also explicitly waives any challenge to the constitutionality of the statutes to which Defendant is pleading. If Defendant appeals, the United States may support on appeal the sentence or restitution order actually imposed.

XII

BREACH OF THE PLEA AGREEMENT

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

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

1. Failing to plead guilty pursuant to this agreement;
2. Failing to fully accept responsibility as established in Section X, paragraph B, above;
3. Failing to appear in court;
4. Attempting to withdraw the plea;
5. Failing to abide by any court order related to this case;
6. Appealing (which occurs if a notice of appeal is filed) or collaterally attacking the conviction or sentence 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.

If Defendant breaches this plea agreement, Defendant will not be able to enforce any provisions, and the United States will be relieved of all its obligations under this plea agreement. For example, the United States may proceed to sentencing but recommend a different sentence than what it agreed to recommend above. Or the United States 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 indefinitely as of the date all parties have signed this agreement; Defendant also waives any double jeopardy defense to such charges). In addition, the United States may move to set aside Defendant's guilty plea. Defendant may not withdraw the guilty plea based on the United States' pursuit of remedies for Defendant's breach.

Additionally, if Defendant breaches 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 factual basis statement in Section II.B 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 that is the subject of this plea agreement or any charge(s) that the United States agreed to dismiss or not file as part of this agreement, but later pursues because of a breach by the Defendant. Additionally, Defendant knowingly, voluntarily, and intelligently waives any argument that the statements and any evidence derived from the statements should be suppressed, cannot be used by the United States, or are inadmissible under the United States Constitution,

1 any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of
2 the Federal Rules of Criminal Procedure, and any other federal rule.

3 **XIII**

4 **CONTENTS AND MODIFICATION OF AGREEMENT**

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

9 **XIV**

10 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

11 By signing this agreement, Defendant certifies that Defendant has
12 read it (or that it has been read to Defendant in Defendant's native
13 language). Defendant has discussed the terms of this agreement with
14 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.

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

11/20/2019
DATED

NW Pul
NICHOLAS W. PILCHAK
ANDREW R. HADEN
Assistant U.S. Attorneys

11-20-19
DATED

Michael Pancer
MICHAEL PANCER
JOHN DILLON
G. COLE CASEY
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

LEO
LEO JOSEPH HAMEL
Defendant

Approved By:

Robert S. Huie
Robert S. Huie
Assistant U.S. Attorney