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UNITED STATES OF AMERICA

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10  
11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) CR No. 10-  
14 )  
Plaintiff, ) PLEA AGREEMENT FOR DEFENDANT  
15 ) IRVING COHEN  
v. )  
16 )  
IRVING COHEN, )  
17 )  
Defendant. )  
18 )  
19 )

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20 1. This constitutes the plea agreement between IRVING COHEN  
21 ("defendant"), and the United States Attorney's Office for the  
22 Central District of California ("the USAO") in the above-  
23 captioned case. This agreement is limited to the USAO and cannot  
24 bind any other federal, state, local, or foreign prosecuting,  
25 enforcement, administrative, or regulatory authorities.

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1 USAO, the Federal Bureau of Investigation, and, as directed by  
2 the USAO, any other federal, state, local, or foreign  
3 prosecuting, enforcement, administrative, or regulatory  
4 authority. This cooperation requires defendant to:

5 a) Respond truthfully and completely to all questions  
6 that may be put to defendant, whether in interviews, before a  
7 grand jury, or at any trial or other court proceeding.

8 b) Attend all meetings, grand jury sessions, trials  
9 or other proceedings at which defendant's presence is requested  
10 by the USAO or compelled by subpoena or court order.

11 c) Produce voluntarily all documents, records, or  
12 other tangible evidence relating to matters about which the USAO,  
13 or its designee, inquires.

14 d) If requested to do so by the USAO, act in an  
15 undercover capacity to the best of defendant's ability in  
16 connection with criminal investigations by federal, state, local,  
17 or foreign law enforcement authorities, in accordance with the  
18 express instructions of those law enforcement authorities.

19 Defendant agrees not to act in an undercover capacity, tape  
20 record any conversations, or gather any evidence except after a  
21 request by the USAO and in accordance with express instructions  
22 of federal, state, local, or foreign law enforcement authorities.

23 4. For purposes of this agreement: (1) "Cooperation  
24 Information" shall mean any statements made, or documents,  
25 records, tangible evidence, or other information provided, by  
26 defendant pursuant to defendant's cooperation under this  
27 agreement; and (2) "Plea Information" shall mean any statements  
28 made by defendant, under oath, at the guilty plea hearing and the

1 agreed to factual basis statement in this agreement.

2  
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 factors  
7 contained in this agreement.

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

15 d) Except for criminal tax violations (including  
16 conspiracy to commit such violations chargeable under 18 U.S.C.  
17 § 371), not further criminally prosecute defendant for violations  
18 of 18 U.S.C. §§ 157, 371, 1341, 1343, 1344, and 1957 arising out  
19 of defendant's conduct described in the agreed-to factual basis  
20 set forth in paragraph 15 below. Defendant understands that the  
21 USAO is free to criminally prosecute defendant for any other  
22 unlawful past conduct or any unlawful conduct that occurs after  
23 the date of this agreement. Defendant agrees that at the time of  
24 sentencing the Court may consider the uncharged conduct in  
25 determining the applicable Sentencing Guidelines range, the  
26 propriety and extent of any departure from that range, and the  
27 sentence to be imposed after consideration of the Sentencing  
28 Guidelines and all other relevant factors under 18 U.S.C.

1 § 3553(a)

2  
3 6. The USAO further agrees:

4 a) Not to offer as evidence in its case-in-chief in  
5 the above-captioned case or any other criminal prosecution that  
6 may be brought against defendant by the USAO, or in connection  
7 with any sentencing proceeding in any criminal case that may be  
8 brought against defendant by the USAO, any Cooperation  
9 Information. Defendant agrees, however, that the USAO may use  
10 both Cooperation Information and Plea Information: (1) to obtain  
11 and pursue leads to other evidence, which evidence may be used  
12 for any purpose, including any criminal prosecution of defendant;  
13 (2) to cross-examine defendant should defendant testify, or to  
14 rebut any evidence offered, or argument or representation made,  
15 by defendant, defendant's counsel, or a witness called by  
16 defendant in any trial, sentencing hearing, or other court  
17 proceeding; and (3) in any criminal prosecution of defendant for  
18 false statement, obstruction of justice, or perjury.

19 b) Not to use Cooperation Information against  
20 defendant at sentencing for the purpose of determining the  
21 applicable guideline range, including the appropriateness of an  
22 upward departure, or the sentence to be imposed, and to recommend  
23 to the Court that Cooperation Information not be used in  
24 determining the applicable guideline range or the sentence to be  
25 imposed. Defendant understands, however, that Cooperation  
26 Information will be disclosed to the probation office and the  
27 Court, and that the Court may use Cooperation Information for the  
28 purposes set forth in U.S.S.G. § 1B1.8(b) and for determining the

1 sentence to be imposed.

2  
3 c) In connection with defendant's sentencing, to  
4 bring to the Court's attention the nature and extent of  
5 defendant's cooperation.

6 d) If the USAO determines, in its exclusive judgment,  
7 that defendant has both complied with defendant's obligations  
8 under paragraphs 2 and 3 above and provided substantial  
9 assistance to law enforcement in the prosecution or investigation  
10 of another ("substantial assistance"), to move the Court pursuant  
11 to U.S.S.G. § 5K1.1 to fix an offense level and corresponding  
12 guideline range below that otherwise dictated by the sentencing  
13 guidelines, and to recommend a term of imprisonment within this  
14 reduced range.

15 DEFENDANT'S UNDERSTANDINGS REGARDING COOPERATION

16 7. Defendant understands the following:

17 a) Any knowingly false or misleading statement by  
18 defendant will subject defendant to prosecution for false  
19 statement, obstruction of justice, and perjury and will  
20 constitute a breach by defendant of this agreement.

21 b) Nothing in this agreement requires the USAO or any  
22 other prosecuting, enforcement, administrative, or regulatory  
23 authority to accept any cooperation or assistance that defendant  
24 may offer, or to use it in any particular way.

25 c) Defendant cannot withdraw defendant's guilty pleas  
26 if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1  
27 for a reduced guideline range or if the USAO makes such a motion  
28 and the Court does not grant it or if the Court grants such a

1 USAO motion but elects to sentence above the reduced range.

2 d) At this time the USAO makes no agreement or  
3 representation as to whether any cooperation that defendant has  
4 provided or intends to provide constitutes or will constitute  
5 substantial assistance. The decision whether defendant has  
6 provided substantial assistance will rest solely within the  
7 exclusive judgment of the USAO.

8 e) The USAO's determination whether defendant has  
9 provided substantial assistance will not depend in any way on  
10 whether the government prevails at any trial or court hearing in  
11 which defendant testifies or in which the government otherwise  
12 presents information resulting from defendant's cooperation.

13 NATURE OF THE OFFENSES

14 8. Defendant understands that for defendant to be guilty of  
15 the crime charged in counts one and two (violations of Title 18,  
16 United States Code, Sections 157(1), 2) (bankruptcy fraud), the  
17 following must be true: (1) defendant devised or intended to  
18 devise a scheme or plan to defraud; (2) defendant acted with the  
19 intent to defraud; (3) defendant's act was material; and (4)  
20 defendant filed, willfully caused to be filed, or aided and  
21 abetted the filing of a petition under a Title 11 bankruptcy  
22 proceeding to carry out or attempt to carry out an essential  
23 party of the scheme. Defendant admits that defendant is, in  
24 fact, guilty of these offenses as described in counts one and two  
25 of the information.

26 PENALTIES AND RESTITUTION

27 9. Defendant understands that the statutory maximum  
28 sentence that the Court can impose for each violation of

1 Title 18, United States Code, Section 157(1), is: five years  
2 imprisonment; a three-year period of supervised release; a fine  
3 of \$250,000 or twice the gross gain or gross loss resulting from  
4 the offense, whichever is greatest; and a mandatory special  
5 assessment of \$100.

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

12 11. Defendant understands that defendant will be required  
13 to pay full restitution to the victims of the offenses.  
14 Defendant agrees that, in return for the USAO's compliance with  
15 its obligations under this agreement, the amount of restitution  
16 is not restricted to the amounts alleged in the counts to which  
17 defendant is pleading guilty and may include losses arising from  
18 charges not prosecuted pursuant to this agreement as well as all  
19 relevant conduct in connection with those charges.

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



1 maximum stated above.

2 13. Defendant understands that, by pleading guilty,  
3 defendant may be giving up valuable government benefits and  
4 valuable civic rights, such as the right to vote, the right to  
5 possess a firearm, the right to hold office, and the right to  
6 serve on a jury. Defendant understands that once the court  
7 accepts defendant's guilty pleas, it will be a federal felony for  
8 defendant to possess a firearm or ammunition. Defendant  
9 understands that the convictions in this case may also subject  
10 defendant to various other collateral consequences, including but  
11 not limited to revocation of probation, parole, or supervised  
12 release in another case and suspension or revocation of a  
13 professional license. Defendant understands that unanticipated  
14 collateral consequences will not serve as grounds to withdraw  
15 defendant's guilty pleas.

16 14. Defendant understands that, if defendant is not a  
17 United States citizen, the felony conviction in this case may  
18 subject defendant to removal, also known as deportation, which  
19 may, under some circumstances, be mandatory. The Court cannot,  
20 and defendant's attorney also may not be able to, advise  
21 defendant fully regarding the immigration consequences of the  
22 felony conviction in this case. Defendant understands that by  
23 entering guilty pleas defendant waives any claim that unexpected  
24 immigration consequences may render defendant's guilty pleas  
25 invalid.

26 FACTUAL BASIS

27 15. Defendant and the USAO agree to the statement of facts  
28 provided below. Defendant and the USAO agree that this statement

1 of facts is sufficient to support pleas of guilty to the charges  
2 described in this agreement and to establish the Sentencing  
3 Guidelines factors set forth in paragraph 17 below, but is not  
4 meant to be a complete recitation of all facts relevant to the  
5 underlying criminal conduct or all facts known to either party  
6 that relate to that conduct.

7           a. Not later than December 1, 2006, defendant  
8 offered a foreclosure-delay service to property owners  
9 whose properties were in danger of being foreclosed  
10 upon and sold. The foreclosure-delay service was a  
11 fraudulent scheme that worked by: (a) filing bankruptcy  
12 petitions in fictitious persons' names to create a  
13 bankruptcy stay; (b) recording a deed granting the  
14 fictitious person a fractional-interest (1/8th  
15 interest) in a client's property that was nearing a  
16 foreclosure sale; and (c) faxing the bankruptcy  
17 petition and fractional-interest deed to the lender or  
18 trustee to stop the pending sale. Defendant knew  
19 throughout his participation in the scheme, which  
20 continued from no later than December 1, 2006 through  
21 July 28, 2010, that the bankruptcy petitions and  
22 fractional-interest deeds listed fictitious persons.

23           b. Defendant recruited Darwin Bowman, who had  
24 provided notary services to defendant concerning the  
25 fractional-interest deeds, to help defendant run the  
26 foreclosure-delay scheme in 2007. In approximately  
27 February 2008, defendant reported to jail to serve an  
28 eight-month sentence for a fraud conviction in Los

1 Angeles County Superior Court. When defendant reported  
2 to jail, he asked Bowman to continue running the  
3 foreclosure-delay scheme in defendant's absence.  
4 Bowman agreed to pay defendant's incarceration costs  
5 from scheme proceeds in exchange for his taking over  
6 the scheme in defendant's absence. As part of the  
7 information that defendant gave to Bowman in order for  
8 Bowman to run the scheme while defendant was  
9 incarcerated, no later than May 1, 2008, defendant told  
10 Bowman that the scheme was based on using bankruptcy  
11 petitions filed in the names of fictitious persons.  
12 Bowman continued to run the foreclosure-delay scheme  
13 during defendant's incarceration in 2008.

14 c. When defendant was released from custody in  
15 late 2008, defendant immediately rejoined Bowman in  
16 running the foreclosure-delay scheme as before. Both  
17 individuals recruited salespersons, obtained clients,  
18 directed co-schemer R.P. to file bankruptcy petitions  
19 in fictitious names, and faxed petitions and  
20 fractional-interest deeds to trustees to halt pending  
21 trustee foreclosure sales. Defendant and Bowman ran  
22 the foreclosure-delay scheme together until July 28,  
23 2010, the day on which Federal Bureau of Investigation  
24 agents executed search warrants on defendant's and  
25 Bowman's residences and seized files and computers.

26 d. During the nearly three years in which  
27 defendant was running the foreclosure-delay scheme, the  
28 scheme used more than 20 salespersons (who were called

1 "producers" in the scheme) to recruit clients. During  
2 this period, defendant and Bowman gave directions to  
3 R.P., producers, and clients in order to continue the  
4 scheme. Defendant was also aware that R.P. filed  
5 certain bankruptcy petitions in fictitious names  
6 without defendant first having requested or instructed  
7 her to do so. Defendant was also aware that, on some  
8 occasions, Bowman faxed the bankruptcy petitions and  
9 fractional-interest deeds to lenders and their trustees  
10 without defendant first having requested or instructed  
11 him to do so. Defendant understood, however, that his  
12 co-schemers were performing these duties in furtherance  
13 of the scheme.

14 e. From approximately December 1, 2006, through  
15 approximately July 28, 2010, defendant and his  
16 co-schemers delayed the foreclosure sales of  
17 approximately 1,444 properties for periods ranging  
18 between one month and three years. These delays caused  
19 lenders to lose interest payments on mortgage loans  
20 totaling more than \$725 million that would otherwise  
21 have been partially or entirely satisfied through the  
22 foreclosure sales. During that same period, defendant  
23 and his co-schemers collected approximately \$546,000  
24 from clients in monthly fees paid for illegal  
25 foreclosure-delay services.

26 Count One

27 f. On or about May 6, 2009, R.P. filed a false  
28 Voluntary Bankruptcy Petition in the name of Marcus

1 Lamont Collins, a fictitious person, bearing case  
2 number 6:09-19443 (filed in the U.S. Bankruptcy Court,  
3 Central District of California), under Title 11 of the  
4 United States Code. Defendant knew that the filing was  
5 in the name of a fictitious person and he used it with  
6 the intent to delay foreclosure sales on clients'  
7 properties.

8 g. On or about May 27, 2009, defendant sent a  
9 facsimile to NDEX West, LLC, which included: the  
10 Collins Bankruptcy Petition; a fractional-interest deed  
11 from D.W. to Marcus Lamont Collins; and NDEX West's own  
12 Notice of Trustee's Sale for D.W.'s property. Chase  
13 Home Finance, LLC was D.W.'s lender.

14 h. As a result of the May 27, 2010, fax, NDEX  
15 West canceled the scheduled foreclosure trustee's sale  
16 and waited to reschedule the sale until after the  
17 bankruptcy stay was no longer in effect as to D.W.'s  
18 property. The total delay effected on the foreclosure  
19 sale of this real property by this scheme was  
20 approximately five months.

21 Count Two

22 i. On or about November 17, 2009, R.P. filed a  
23 false Voluntary Bankruptcy Petition in the name of  
24 Kenneth Jason Whitaker, a fictitious person, bearing  
25 case number 6:09-37771 (filed in the U.S. Bankruptcy  
26 Court, Central District of California), under Title 11  
27 of the United States Code. Defendant knew that the  
28 filing was in the name of a fictitious person and he

1 used it with the intent to delay foreclosure sales on  
2 clients' properties.

3 j. On or about November 24, 2009, defendant sent  
4 a facsimile to client J.M.G.'s lender's representative  
5 in Addison, Texas, NDEX West, LLC, which included: the  
6 Whitaker Bankruptcy Petition; a fractional-interest  
7 deed from J.M.G. to Kenneth Jason Whitaker; and NDEX  
8 West's own Notice of Trustee's Sale for J.M.G.'s  
9 property. New Century Mortgage Corp. was J.M.G.'s  
10 lender.

11 k. As a result of the November 24, 2009, fax,  
12 NDEX West canceled the scheduled foreclosure sale and  
13 waited to reschedule the sale until after the  
14 bankruptcy stay was no longer in effect as to J.M.G.'s  
15 property. The total delay effected on the foreclosure  
16 sale of this real property by this scheme was  
17 approximately 20 months.

#### 18 SENTENCING FACTORS

19 16. Defendant understands that in determining defendant's  
20 sentence the Court is required to consider the factors set forth  
21 in 18 U.S.C. § 3553(a)(1)-(7), including the kinds of sentence  
22 and sentencing range established under the Sentencing Guidelines.  
23 Defendant understands that the Sentencing Guidelines are advisory  
24 only, that defendant cannot have any expectation of receiving a  
25 sentence within the Sentencing Guidelines range, and that after  
26 considering the Sentencing Guidelines and the other § 3553(a)  
27 factors, the Court will be free to exercise its discretion to  
28

1 impose any sentence it finds appropriate up to the maximum set by  
2 statute for the crimes of conviction.

3 17. Defendant and the USAO agree to the following  
4 applicable Sentencing Guidelines factors:

5 Base Offense Level 6 [U.S.S.G. § 2B1.1(a)(2)]

6 Specific Offense Characteristics

7 Loss (more than \$200,000) +12 [U.S.S.G. § 2B1.1(b)(1)(G)]

8 Victims (more than 50) +4 [U.S.S.G. § 2B1.1(b)(2)(B)]

9 Bankruptcy involved +2 [U.S.S.G. § 2B1.1(b)(8)]

10 Adjustments

11 Role +2 or +4 [U.S.S.G. § 3B1.1]

12 Adjusted Offense Level 26 or 28

13 With respect to the adjustment for role, defendant and the USAO  
14 agree and stipulate that defendant should receive at least two  
15 points for aggravating role pursuant to U.S.S.G. § 3B1.1(c). The  
16 government reserves the right to argue that defendant should  
17 receive an additional two points, for a total of four points, for  
18 aggravating role pursuant to U.S.S.G. § 3B1.1(a). Other than  
19 this adjustment, defendant and the USAO waive the right to argue  
20 that additional specific offense characteristics, adjustments,  
21 and departures under the Sentencing Guidelines are appropriate.

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

24 19. Defendant and the USAO reserve the right to argue for a  
25 sentence outside the sentencing range established by the  
26 Sentencing Guidelines based on the factors set forth in 18 U.S.C.  
27 § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

1                                WAIVER OF CONSTITUTIONAL RIGHTS

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

4                    a) The right to persist in a plea of not guilty.

5                    b) The right to a speedy and public trial by jury.

6                    c) The right to the assistance of an attorney at trial,  
7 including the right to have the Court appoint an attorney to  
8 represent defendant at trial. Defendant understands, however,  
9 that, despite defendant's guilty pleas, defendant retains the  
10 right to be represented by an attorney -- and, if necessary, to  
11 have the Court appoint an attorney if defendant cannot afford one  
12 -- at every other stage of the proceeding.

13                    d) The right to be presumed innocent and to have the  
14 burden of proof placed on the government to prove defendant  
15 guilty beyond a reasonable doubt.

16                    e) The right to confront and cross-examine witnesses  
17 against defendant.

18                    f) The right to testify on defendant's own behalf and  
19 present evidence in opposition to the charges, including calling  
20 witnesses and subpoenaing those witnesses to testify.

21                    g) The right not to be compelled to testify, and, if  
22 defendant chose not to testify or present evidence, to have that  
23 choice not be used against defendant.

24                    h) Any and all rights to pursue any affirmative  
25 defenses, Fourth Amendment or Fifth Amendment claims, and other  
26 pretrial motions that have been filed or could be filed.



WAIVER OF DNA TESTING

21. Defendant has been advised that the government has in its possession the following items of physical evidence that could be subjected to DNA testing: all items seized during the July 28, 2010, execution of a search warrant of defendant's residence, including approximately one box of documents. Defendant understands that the government does not intend to conduct DNA testing of any of these items. Defendant understands: (a) before entering guilty pleas pursuant to this agreement, defendant could request DNA testing of evidence in this case; and (b) with respect to the offenses to which defendant is pleading guilty pursuant to this agreement, defendant would have the right to request DNA testing of evidence after conviction under the conditions specified in 18 U.S.C. § 3600. Knowing and understanding defendant's right to request DNA testing, defendant voluntarily gives up that right with respect to both the specific items listed above and any other items of evidence there may be in this case that might be subject to DNA testing. Defendant understands that by giving up this right: (a) defendant is giving up any ability to request DNA testing of evidence in this case in the current proceeding, in any proceeding after conviction under 18 U.S.C. § 3600, and in any other proceeding of any type; and (b) defendant will never have another opportunity to have the evidence in this case, whether or not listed above, submitted for DNA testing, and will never have an opportunity to employ the results of DNA testing to support a claim that defendant is innocent of the offenses to which defendant is pleading guilty.

1                                    WAIVER OF APPEAL OF CONVICTION

2            22. Defendant understands that, with the exception of an  
3 appeal based on a claim that defendant's guilty pleas were  
4 involuntary, by pleading guilty defendant is waiving and giving  
5 up any right to appeal defendant's convictions on the offenses to  
6 which defendant is pleading guilty.

7                                    LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

8            23. Defendant agrees that, provided the Court imposes a  
9 total term of imprisonment on all counts of conviction of no more  
10 than 108 months, defendant gives up the right to appeal all of  
11 the following: (a) the procedures and calculations used to  
12 determine and impose any portion of the sentence; (b) the term of  
13 imprisonment imposed by the Court; (c) the fine imposed by the  
14 court, provided it is within the statutory maximum; (d) the term  
15 of probation or supervised release imposed by the Court, provided  
16 it is within the statutory maximum; and (e) any of the following  
17 conditions of probation or supervised release imposed by the  
18 Court: the standard conditions set forth in General Orders 318,  
19 01-05, and/or 05-02 of this Court; the drug testing conditions  
20 mandated by 18 U.S.C. §§ 3563(a) (5) and 3583(d).

21           24. The USAO agrees that, provided (a) all portions of the  
22 sentence are at or below the statutory maximum specified above  
23 and (b) the Court imposes a term of imprisonment of no less than  
24 70 months the USAO gives up its right to appeal any portion of  
25 the sentence, with the exception that the USAO reserves the right  
26 to appeal the amount of restitution ordered.

1                                    RESULT OF WITHDRAWAL OF GUILTY PLEAS

2            25. Defendant agrees that if, after entering guilty pleas  
3 pursuant to this agreement, defendant seeks to withdraw and  
4 succeeds in withdrawing defendant's guilty pleas on any basis  
5 other than a claim and finding that entry into this plea  
6 agreement was involuntary, then (a) the USAO will be relieved of  
7 all of its obligations under this agreement, including in  
8 particular its obligations regarding the use of Cooperation  
9 Information; (b) in any investigation, criminal prosecution, or  
10 civil, administrative, or regulatory action, defendant agrees  
11 that any Cooperation Information and any evidence derived from  
12 any Cooperation Information shall be admissible against  
13 defendant, and defendant will not assert, and hereby waives and  
14 gives up, any claim under the United States Constitution, any  
15 statute, or any federal rule, that any Cooperation Information or  
16 any evidence derived from any Cooperation Information should be  
17 suppressed or is inadmissible; and (c) should the USAO choose to  
18 pursue any charge that was either dismissed or not filed as a  
19 result of this agreement, then (i) any applicable statute of  
20 limitations will be tolled between the date of defendant's  
21 signing of this agreement and the filing commencing any such  
22 action; and (ii) defendant waives and gives up all defenses based  
23 on the statute of limitations, any claim of pre-indictment delay,  
24 or any speedy trial claim with respect to any such action, except  
25 to the extent that such defenses existed as of the date of  
26 defendant's signing this agreement.

1 EFFECTIVE DATE OF AGREEMENT

2 26. This agreement is effective upon signature and  
3 execution of all required certifications by defendant,  
4 defendant's counsel, and an Assistant United States Attorney.

5 BREACH OF AGREEMENT

6 27. Defendant agrees that if defendant, at any time after  
7 the signature of this agreement and execution of all required  
8 certifications by defendant, defendant's counsel, and an  
9 Assistant United States Attorney, knowingly violates or fails to  
10 perform any of defendant's obligations under this agreement ("a  
11 breach"), the USAO may declare this agreement breached. For  
12 example, if defendant knowingly, in an interview, before a grand  
13 jury, or at trial, falsely accuses another person of criminal  
14 conduct or falsely minimizes defendant's own role, or the role of  
15 another, in criminal conduct, defendant will have breached this  
16 agreement. All of defendant's obligations are material, a single  
17 breach of this agreement is sufficient for the USAO to declare a  
18 breach, and defendant shall not be deemed to have cured a breach  
19 without the express agreement of the USAO in writing. If the  
20 USAO declares this agreement breached, and the Court finds such a  
21 breach to have occurred, then:

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

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

1 to which defendant has pleaded guilty; (ii) will no longer be  
2 bound by any agreements regarding criminal prosecution, and will  
3 be free to criminally prosecute defendant for any crime,  
4 including charges that the USAO would otherwise have been  
5 obligated not to criminally prosecute pursuant to this agreement;  
6 and (iii) will no longer be bound by any agreement regarding the  
7 use of Cooperation Information and will be free to use any  
8 Cooperation Information in any way in any investigation, criminal  
9 prosecution, or civil, administrative, or regulatory action.

10 c) The USAO will be free to criminally prosecute  
11 defendant for false statement, obstruction of justice, and  
12 perjury based on any knowingly false or misleading statement by  
13 defendant.

14 d) In any investigation, criminal prosecution, or  
15 civil, administrative, or regulatory action: (I) defendant will  
16 not assert, and hereby waives and gives up, any claim that any  
17 Cooperation Information was obtained in violation of the Fifth  
18 Amendment privilege against compelled self-incrimination; and  
19 (ii) defendant agrees that any Cooperation Information and any  
20 Plea Information, as well as any evidence derived from any  
21 Cooperation Information or any Plea Information, shall be  
22 admissible against defendant, and defendant will not assert, and  
23 hereby waives and gives up, any claim under the United States  
24 Constitution, any statute, Rule 410 of the Federal Rules of  
25 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure,  
26 or any other federal rule, that any Cooperation Information, any  
27 Plea Information, or any evidence derived from any Cooperation  
28

1 Information or any Plea Information should be suppressed or is  
2 inadmissible.

3 28. Following the Court's finding of a knowing breach of  
4 this agreement by defendant, should the USAO choose to pursue any  
5 charge that was either dismissed or not filed as a result of this  
6 agreement, then:

7 a) Defendant agrees that any applicable statute of  
8 limitations is tolled between the date of defendant's signing of  
9 this agreement and the filing commencing any such action.

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

15 COURT AND PROBATION OFFICE NOT PARTIES

16 29. Defendant understands that the Court and the United  
17 States Probation Office are not parties to this agreement and  
18 need not accept any of the USAO's sentencing recommendations or  
19 the parties' agreements to facts or sentencing factors.

20 30. Defendant understands that both defendant and the USAO  
21 are free to: (a) supplement the facts by supplying relevant  
22 information to the United States Probation Office and the Court,  
23 (b) correct any and all factual misstatements relating to the  
24 Court's Sentencing Guidelines calculations, and (c) argue on  
25 appeal and collateral review that the Court's Sentencing  
26 Guidelines calculations are not error, although each party agrees  
27 to maintain its view that the calculations in paragraph 17 are  
28 consistent with the facts of this case. While this paragraph

1 permits both the USAO and defendant to submit full and complete  
2 factual information to the United States Probation Office and the  
3 Court, even if that factual information may be viewed as  
4 inconsistent with the facts agreed to in this agreement, this  
5 paragraph does not affect defendant's and the USAO's obligations  
6 not to contest the facts agreed to in this agreement.

7       31. Defendant understands that even if the Court ignores  
8 any sentencing recommendation, finds facts or reaches conclusions  
9 different from those agreed to, and/or imposes any sentence up to  
10 the maximum established by statute, defendant cannot, for that  
11 reason, withdraw defendant's guilty pleas, and defendant will  
12 remain bound to fulfill all defendant's obligations under this  
13 agreement. Defendant understands that no one -- not the  
14 prosecutor, defendant's attorney, or the Court -- can make a  
15 binding prediction or promise regarding the sentence defendant  
16 will receive, except that it will be within the statutory  
17 maximum.

18                               NO ADDITIONAL AGREEMENTS

19       32. Defendant understands that, except as set forth herein,  
20 there are no promises, understandings, or agreements between the  
21 USAO and defendant or defendant's attorney, and that no  
22 additional promise, understanding, or agreement may be entered  
23 into unless in a writing signed by all parties or on the record  
24 in court.

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1                   PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

2           33. The parties agree that this agreement will be  
3 considered part of the record of defendant's guilty plea hearing  
4 as if the entire agreement had been read into the record of the  
5 proceeding.

6 AGREED AND ACCEPTED

7 UNITED STATES ATTORNEY'S OFFICE  
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 ANDRÉ BIROTTE JR.  
10 United States Attorney

11 \_\_\_\_\_  
12 EVAN J. DAVIS  
13 Assistant United States Attorney

\_\_\_\_\_ Date

14 \_\_\_\_\_  
15 IRVING COHEN  
16 Defendant

\_\_\_\_\_ Date

17 \_\_\_\_\_  
18 RICHARD DEBRO  
19 Attorney for Defendant  
20 Irving Cohen

\_\_\_\_\_ Date



1                                   CERTIFICATION OF DEFENDANT

2            I have read this agreement in its entirety. I have had  
3 enough time to review and consider this agreement, and I have  
4 carefully and thoroughly discussed every part of it with my  
5 attorney. I understand the terms of this agreement, and I  
6 voluntarily agree to those terms. I have discussed the evidence  
7 with my attorney, and my attorney has advised me of my rights, of  
8 possible pretrial motions that might be filed, of possible  
9 defenses that might be asserted either prior to or at trial, of  
10 the sentencing factors set forth in 18 U.S.C. § 3553(a), of  
11 relevant Sentencing Guidelines provisions, and of the  
12 consequences of entering into this agreement. No promises,  
13 inducements, or representations of any kind have been made to me  
14 other than those contained in this agreement. No one has  
15 threatened or forced me in any way to enter into this agreement.  
16 I am satisfied with the representation of my attorney in this  
17 matter, and I am pleading guilty because I am guilty of the  
18 charges and wish to take advantage of the promises set forth in  
19 this agreement, and not for any other reason.

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21 \_\_\_\_\_  
22 IRVING COHEN  
23 Defendant

\_\_\_\_\_  
Date

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CERTIFICATION OF DEFENDANT'S ATTORNEY

I am Irving Cohen's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.

\_\_\_\_\_  
RICHARD DEBRO  
Attorney for Defendant  
Irving Cohen

\_\_\_\_\_  
Date