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6 Attorneys for United States of America

7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

Case No. 22CR0280-JLS

11 Plaintiff,

12 v.

PLEA AGREEMENT

13 CARLOS GUERRERO (1),

14 Defendants.

15 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
16 AMERICA, through its counsel, Randy S. Grossman, Acting United States  
17 Attorney, and Sabrina L. Fève, Assistant United States Attorney, and  
18 Defendant Carlos Guerrero, with the advice and consent of Pedro Bernal  
19 Bilsé, counsel for Defendant, as follows:

20 **I**

21 **THE PLEA**

22 Defendant agrees to waive Indictment and plead guilty to an  
23 Information charging Defendant with:

24 Beginning on a date unknown but no later than August 2014,  
25 and continuing until in or around June 2017, in the Southern  
26 District of California and elsewhere, defendants CARLOS  
27 GUERRERO and DANIEL MORENO did knowingly and intentionally  
28 conspire to commit offenses against the United States, to  
wit: a) interception of wire and electronic communications,  
namely, to intentionally intercept, endeavor to intercept,  
procure another person to intercept, and procure another

1 person to endeavor to intercept the contents of one or more  
2 communications and the interception was done and attempted  
3 using an electronic, mechanical, and other device, and the  
4 targeted communication and communications were wire or  
5 electronic communications, in violation of Title 18, United  
6 States Code, Section 2511(1)(a); and b) sale of interception  
7 devices, namely to intentionally manufacture, assemble,  
8 possess, and sell a device, knowing and having reason to know  
9 that the design of the device rendered it primarily useful  
10 for the purpose of the surreptitious interception of wire and  
11 electronic communications, and such device and any component  
12 thereof has been or will be sent through the mail or  
13 transported in interstate and foreign commerce, in violation  
14 of Title 18, United States Code, Section 2512(1)(b).

15 All in violation of Title 18, United States Code, Section 371

16 In exchange for Defendant's guilty plea, the Government agrees not  
17 to prosecute Defendant for conspiring to violate 18 U.S.C.  
18 § 1030(a)(2)(C) and (c)(2)(B)(i), unless Defendant breaches the plea  
19 agreement or the guilty plea entered pursuant to this plea agreement is  
20 set aside for any reason. If Defendant breaches this agreement or the  
21 guilty plea is set aside, section XII below shall apply.

22 Defendant further agrees to forfeit to the United States the sum  
23 of \$25,000 as proceeds he personally obtained from the offense. The  
24 forfeiture is more fully set forth in Section X(G) below.

25 This plea agreement is part of a "package" disposition as set forth  
26 in Section VI.E below

27 **II**

28 **NATURE OF THE OFFENSE**

**A. ELEMENTS EXPLAINED**

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

**18 U.S.C § 371**

1. There was an agreement between two or more persons to  
commit at least one crime, as charged in the Information;

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

3           3. One of the members of the conspiracy performed at least  
4 one overt act for the purpose of carrying out the conspiracy.

5           B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

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

10           1. At all relevant times, defendant owned a consortium of  
11 U.S. and Mexican companies that included Elite by Carga. During this  
12 period, Daniel Moreno worked for Elite by Carga and the other companies  
13 that belonged to Defendant's consortium.

14           2. Prior to August 2014, Defendant agreed with one or more  
15 other persons, including co-defendant Daniel Moreno, to sell,  
16 distribute, and use devices whose primary use and design was to  
17 surreptitiously intercept wire, electronic, and stored communications.  
18 Defendant, along with Moreno and others, also engaged in the sale,  
19 distribution, and use of these devices for commercial advantage and  
20 financial gain.

21           3. On August 7, 2014, Defendant and Moreno met with  
22 representatives of an Italian company (Company A) in San Diego regarding  
23 interception devices manufactured by Company A. Company A sales  
24 materials described the devices, which originated from Italy, as  
25 allowing users to "[h]ack into your targets[']...wireless network" to  
26 intercept communications and geolocate targets. Company A demonstrated  
27 the devices to Defendant and Moreno at their initial San Diego meeting.  
28

1 Following the meeting, Defendant and Moreno agreed that Elite by Carga  
2 would become a Mexican sales representative for Company A.

3 4. After entering this agreement, Defendant and Moreno,  
4 through Elite by Carga, earned commissions brokering the sale of Company  
5 A's interception devices to the Mexican state governments of Baja and  
6 Durango. To facilitate the sales, Defendant repeatedly arranged for  
7 Elite by Carga employees to transport Company A representatives and  
8 devices between San Diego and Mexico.

9 5. Defendant understood that the Company A interception  
10 equipment sold to Mexican clients could and likely would be used for  
11 political purposes, not just for law enforcement purposes. Defendant  
12 knew this, in part, because Defendant arranged for the Mayor of a town  
13 in the Mexican state of Morelos to gain unauthorized access to the U.S.-  
14 based Twitter, Hotmail, and iCloud accounts of a political rival.

15 6. Defendant also knew that Company A's devices were used  
16 for commercial, rather than law enforcement, purposes because, in  
17 December 2015, Defendant and Moreno successfully used an interception  
18 device to intercept the phone calls of a business competitor to benefit  
19 Defendant's consortium. The interception of Defendant's competitor's  
20 cellular phone occurred while the competitor was in both Mexico and  
21 Southern California.

22 7. In addition to working with Company A, Defendant  
23 directed Moreno to develop relationships with other international  
24 vendors that, like Company A, sold interception devices and hacking  
25 services. Through these contacts, Defendant and Moreno marketed other  
26 providers' devices and services to clients in Mexico and the United  
27 States and Elite by Carga marketing materials advertised the monthly  
28

1 rate for access to these devices and services as approximately \$25,000  
2 USD.

3 8. In particular, in 2016 and 2017, Defendant and Moreno  
4 worked together to market signal jammers, Wi-Fi interception tools,  
5 IMSI catchers, and the ability to hack WhatsApp messages, in addition  
6 to the geolocation and cell phone interception services Defendant and  
7 Moreno sold on behalf of Company A. Because Defendant, Moreno, and Elite  
8 by Carga imported these devices and services from Italy, Israel, and  
9 other foreign countries, Defendant knew and understood that these  
10 devices were transported in foreign commerce.

11 9. During 2016 and 2017, Defendant and Moreno successfully  
12 arranged for individual clients in the United States and Mexico to gain  
13 unauthorized access to cell phone wire communications and electronic  
14 communication accounts located in the United States. For example, in  
15 February 2017, one or more Elite by Carga employees agreed to hack the  
16 phone and email account of a Florida-based sales representative of a  
17 large Mexican business in exchange for an approximately \$25,000 payment  
18 from the Mexican business.

19 **III**

20 **PENALTIES**

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

- 23 A. a maximum 5 years in prison;
- 24 B. a maximum \$250,000 fine;
- 25 C. a mandatory special assessment of \$100 per count; and
- 26 D. a term of supervised release of up to 3 years. Failure to  
27 comply with any condition of supervised release may result in  
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1 revocation of supervised release, requiring Defendant to  
2 serve in prison, upon revocation, all or part of the statutory  
3 maximum term of supervised release.

4 **IV**  
5 **DEFENDANT'S WAIVER OF TRIAL RIGHTS AND**  
6 **UNDERSTANDING OF CONSEQUENCES**

7 This guilty plea waives Defendant's right at trial to:

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

17 **V**  
18 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE**  
19 **PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

20 Any information establishing the factual innocence of Defendant  
21 known to the undersigned prosecutor in this case has been turned over  
22 to Defendant. The Government will continue to provide such information  
23 establishing the factual innocence of Defendant.

24 If this case proceeded to trial, the Government would be required  
25 to provide impeachment information for its witnesses. In addition, if  
26 Defendant raised an affirmative defense, the Government would be  
27 required to provide information in its possession that supports such a  
28 defense. By pleading guilty Defendant will not be provided this

1 information, if any, and Defendant waives any right to this information.  
2 Defendant will not attempt to withdraw the guilty plea or to file a  
3 collateral attack based on the existence of this information.

4 VI

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

7 Defendant represents that:

- 8 A. Defendant has had a full opportunity to discuss all the facts  
9 and circumstances of this case with defense counsel and has  
10 a clear understanding of the charges and the consequences of  
11 this plea. By pleading guilty, Defendant may be giving up,  
12 and rendered ineligible to receive, valuable government  
13 benefits and civic rights, such as the right to vote, the  
14 right to possess a firearm, the right to hold office, and the  
15 right to serve on a jury. The conviction in this case may  
16 subject Defendant to various collateral consequences,  
17 including but not limited to revocation of probation, parole,  
18 or supervised release in another case; debarment from  
19 government contracting; and suspension or revocation of a  
20 professional license, none of which can serve as grounds to  
21 withdraw Defendant's guilty plea.
- 22 B. No one has made any promises or offered any rewards in return  
23 for this guilty plea, other than those contained in this  
24 agreement or otherwise disclosed to the Court.
- 25 C. No one has threatened Defendant or Defendant's family to  
26 induce this guilty plea.
- 27 D. Defendant is pleading guilty because Defendant is guilty and  
28 for no other reason.
- 29 E. The disposition contemplated by this agreement is part of a  
30 "package" disposition with codefendant Daniel Moreno. If any  
31 defendant in the package fails to perform or breaches any  
32 part of their agreement, no defendant can withdraw their  
33 guilty plea, but the Government is relieved from and not bound  
34 by any terms in any agreements in the package.

35 VII

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

38 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 Government will

1 bring this plea agreement to the attention of other authorities if  
2 requested by Defendant.

3 **VIII**

4 **APPLICABILITY OF SENTENCING GUIDELINES**

5 The sentence imposed will be based on the factors set forth in 18  
6 U.S.C. § 3553(a). In imposing the sentence, the sentencing judge must  
7 consult the United States Sentencing Guidelines (Guidelines) and take  
8 them into account. Defendant has discussed the Guidelines with defense  
9 counsel and understands that the Guidelines are only advisory, not  
10 mandatory. The Court may impose a sentence more severe or less severe  
11 than otherwise applicable under the Guidelines, up to the maximum in  
12 the statute of conviction. The sentence cannot be determined until a  
13 presentence report is prepared by the U.S. Probation Office and defense  
14 counsel and the Government have an opportunity to review and challenge  
15 the presentence report. Nothing in this plea agreement limits the  
16 Government's duty to provide complete and accurate facts to the district  
17 court and the U.S. Probation Office.

18 **IX**

19 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

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

4 X

5 PARTIES' SENTENCING RECOMMENDATIONS

6 A. SENTENCING GUIDELINE CALCULATIONS

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

- |    |    |   |    |
|----|----|---|----|
| 11 | 1. | Base Offense Level [§ 2H3.1(a)(1)]              | 9  |
| 12 | 2. | Commercial Advantage/Economic Gain [§ 2H3.1(b)] | +3 |
| 13 | 3. | Acceptance of Responsibility [§ 3E1.1]          | -2 |

14 B. ACCEPTANCE OF RESPONSIBILITY

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

- 19 1. Fails to truthfully admit a complete factual basis as  
20 stated in the plea at the time the plea is entered, or  
21 falsely denies, or makes a statement inconsistent with,  
22 the factual basis set forth in this agreement;
- 23 2. Falsely denies prior criminal conduct or convictions;
- 24 3. Is untruthful with the Government, the Court or  
25 probation officer; or
- 26 4. Fails to timely pay the \$25,000 forfeiture to the United  
27 States; or

5. Breaches this plea agreement in any way.

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

Defendant may request or recommend additional downward adjustments, departures, or variances from the Sentencing Guidelines under 18 U.S.C. § 3553. The Government will oppose any downward adjustments, departures, or variances not set forth in Section X, paragraph A 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 Government will recommend that Defendant be sentenced to the low end of the advisory guideline range recommended by the Government at 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. Special assessments shall be paid through the office of the Clerk of the District Court by bank or

1 cashier's check or money order made payable to the "Clerk, United States  
2 District Court."

3 2. Fine

4 The parties will not recommend imposition of a fine given  
5 Defendant's forfeiture agreement.

6 3. Forfeiture

7 Defendant agrees to forfeit the \$25,000 payment his business  
8 received in or about February 2017. Defendant agrees he will deliver a  
9 cashier's check in the amount of \$25,000 payable to "Customs and Border  
10 Protection" bearing his name, case number, and noting it is for payment  
11 of a forfeiture pursuant to a plea agreement. Defendant agrees that  
12 the United States may process this payment for forfeiture criminally,  
13 civilly, or administratively and Defendant waives all rights to notice  
14 and all rights to contest the forfeiture on any grounds. Defendant  
15 agrees the United States may process the forfeiture under any statutory  
16 basis it deems appropriate.

17 Defendant consents and agrees to the immediate entry of an order  
18 of forfeiture upon entry of the guilty plea(s). Defendant further agrees  
19 that upon entry of the order of forfeiture, such order will be  
20 considered final as to defendant. Defendant agrees to immediately  
21 withdraw any claims to property directly or indirectly related to the  
22 criminal conduct seized in connection with this case in any pending  
23 administrative and civil forfeiture proceeding, and consents to the  
24 forfeiture of all properties seized in connection with this case to the  
25 United States. Defendant agrees to execute any and all documents  
26 requested by the Government to facilitate or complete the forfeiture  
27 process. Defendant further agrees not to contest or to assist any other  
28

1 person or entity in contesting the forfeiture of the property seized in  
2 connection with this case. Defendant further agrees that the forfeiture  
3 judgment imposed by the Court will be (i) subject to immediate  
4 enforcement, and (ii) submitted to the Treasury Offset Program so that  
5 any federal payment or transfer of returned property the Defendant  
6 receives may be offset and applied to the outstanding balance on the  
7 forfeiture.

8 Defendant consents and agrees to the entry of orders of forfeiture  
9 for such property and waives the requirements of Federal Rules of  
10 Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in  
11 the charging instrument, announcement of the forfeiture at sentencing,  
12 and incorporation of the forfeiture in the judgment. Defendant  
13 acknowledges that defendant understands that the forfeiture of assets  
14 is part of the sentence that may be imposed in this case and waives any  
15 failure by the Court to advise defendant of this, pursuant to Rule  
16 11(b)(1)(J), at the time the Court accepts the guilty plea(s).

17 Defendant further agrees to waive all constitutional and statutory  
18 challenges in any manner (including direct appeal, habeas corpus, or  
19 any other means) to any forfeiture carried out in accordance with this  
20 agreement on any grounds, including that the forfeiture constitutes an  
21 excessive fine or punishment. Defendant agrees to take all steps as  
22 requested by the United States to pass clear title to forfeitable assets  
23 to the United States, and to testify truthfully in any judicial  
24 forfeiture proceeding.

25 Defendant agrees that the forfeiture provisions of this plea  
26 agreement are intended to, and will, survive defendant, notwithstanding  
27 the abatement of any underlying criminal conviction after the execution  
28

1 of this agreement. The forfeitability of any particular property  
2 pursuant to this agreement shall be determined as if defendant had  
3 survived, and that determination shall be binding upon defendant's  
4 heirs, successors and assigns.

5 H. SUPERVISED RELEASE

6 If the Court imposes a term of supervised release, Defendant will  
7 not seek to reduce or terminate early the term of supervised release  
8 until Defendant has served at least 2/3 of the term of supervised  
9 release and has fully paid and satisfied any special assessments, fine,  
10 criminal forfeiture judgment, and restitution judgment.

11 **XI**

12 **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

13 Defendant waives (gives up) all rights to appeal and to  
14 collaterally attack every aspect of the conviction and sentence,  
15 including any restitution order: up to \$50,000. This waiver includes,  
16 but is not limited to, any argument that the statute of conviction or  
17 Defendant's prosecution is unconstitutional and any argument that the  
18 facts of this case do not constitute the crime charged. The only  
19 exceptions are 1) Defendant may appeal a custodial sentence above the  
20 high end of the guideline range recommended by the Government at  
21 sentencing (if USSG § 5G1.1(b) applies, the high end of the range will  
22 be the statutorily required mandatory minimum sentence), and  
23 2) Defendant may collaterally attack the conviction or sentence on the  
24 basis that Defendant received ineffective assistance of counsel. If  
25 Defendant appeals, the Government may support on appeal the sentence or  
26 restitution order actually imposed.

1 XII

2 BREACH OF THE PLEA AGREEMENT

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

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

- 13 1. Failing to plead guilty pursuant to this agreement;
- 14 2. Failing to fully accept responsibility as established in  
15 Section X, paragraph B, above;
- 16 3. Failing to appear in court;
- 17 4. Attempting to withdraw the plea;
- 18 5. Failing to abide by any court order related to this case;
- 19 6. Appealing (which occurs if a notice of appeal is filed)  
20 or collaterally attacking the conviction or sentence in  
21 violation of Section XI of this plea agreement; or
- 22 7. Engaging in additional criminal conduct from the time of  
23 arrest until the time of sentencing.

24 If Defendant breaches this plea agreement, Defendant will not be  
25 able to enforce any provisions, and the Government will be relieved of  
26 all its obligations under this plea agreement. For example, the  
27 Government may proceed to sentencing but recommend a different sentence  
28

1 than what it agreed to recommend above. Or the Government may pursue  
2 any charges including those that were dismissed, promised to be  
3 dismissed, or not filed as a result of this agreement (Defendant agrees  
4 that any statute of limitations relating to such charges is tolled  
5 indefinitely as of the date all parties have signed this agreement;  
6 Defendant also waives any double jeopardy defense to such charges). In  
7 addition, the Government may move to set aside Defendant's guilty plea.  
8 Defendant may not withdraw the guilty plea based on the Government's  
9 pursuit of remedies for Defendant's breach.

10       Additionally, if Defendant breaches this plea agreement: (i) any  
11 statements made by Defendant, under oath, at the guilty plea hearing  
12 (before either a Magistrate Judge or a District Judge); (ii) the factual  
13 basis statement in Section II.B in this agreement; and (iii) any  
14 evidence derived from such statements, are admissible against Defendant  
15 in any prosecution of, or any action against, Defendant. This includes  
16 the prosecution of the charge(s) that is the subject of this plea  
17 agreement or any charge(s) that the prosecution agreed to dismiss or  
18 not file as part of this agreement, but later pursues because of a  
19 breach by the Defendant. Additionally, Defendant knowingly,  
20 voluntarily, and intelligently waives any argument that the statements  
21 and any evidence derived from the statements should be suppressed,  
22 cannot be used by the Government, or are inadmissible under the United  
23 States Constitution, any statute, Rule 410 of the Federal Rules of  
24 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, and  
25 any other federal rule.

26  
27  
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XIII

CONTENTS AND MODIFICATION OF AGREEMENT

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

XIV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

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

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XV

DEFENDANT SATISFIED WITH COUNSEL

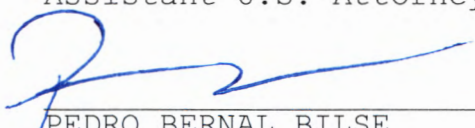
Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and Defendant's counsel did not advise Defendant about what to say in this regard.

RANDY S. GROSSMAN  
Acting United States Attorney

12/6/21  
\_\_\_\_\_  
DATED

  
\_\_\_\_\_  
SABRINA L. FEVE  
Assistant U.S. Attorney

12/6/21  
\_\_\_\_\_  
DATED


  
\_\_\_\_\_  
PEDRO BERNAL BILSE  
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.

12/4/21  
\_\_\_\_\_  
DATED

  
\_\_\_\_\_  
CARLOS GUERRERO  
Defendant

Approved By:

  
\_\_\_\_\_  
JOHN N. PARMLEY  
Assistant U.S. Attorney