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United States of America  
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8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,  
12  
Plaintiff,  
13  
v.  
14 FRANCISCO JAVIER GOMEZ-  
15 RODRIGUEZ,  
16  
Defendant.

CASE NO. 1:15-CR-226 LJO-SKO  
PLEA AGREEMENT  
DATE: TBD  
TIME: 8:30 a.m.  
COURT: Hon. Lawrence J. O'Neill

17  
18 I. INTRODUCTION

19 A. Scope of Agreement

20 The indictment in this case charges the defendant with a violation of 21 U.S.C. §§ 841(a)(1),  
21 841(b)(1)(C), and 846 - Conspiracy To Manufacture, To Distribute, And To Possess With The Intent To  
22 Distribute Marijuana ("Count One"); 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), 18 U.S.C. § 2 -  
23 Manufacture of Marijuana and Aiding and Abetting ("Count Two"); 21 U.S.C. §§ 841(a)(1) and  
24 841(b)(1)(C), 18 U.S.C. § 2 - Possession with the Intent to Distribute Marijuana and Aiding and  
25 Abetting ("Count Three"); 18 U.S.C. §§ 1361, 2 - Depredation of Public Lands and Resources and  
26 Aiding and Abetting ("Count Four"). The indictment also contains a forfeiture allegation that seeks the  
27 forfeiture of two firearms and ammunition. This document contains the complete plea agreement  
28

1 between the United States Attorney's Office for the Eastern District of California (the "government")  
2 and the defendant regarding this case. This plea agreement is limited to the United States Attorney's  
3 Office for the Eastern District of California and cannot bind any other federal, state, or local  
4 prosecuting, administrative, or regulatory authorities.

5 **B. Court Not a Party**

6 The Court is not a party to this plea agreement. Sentencing is a matter solely within the  
7 discretion of the Court, and the Court may take into consideration any and all facts and circumstances  
8 concerning the criminal activities of defendant, including activities that may not have been charged in  
9 the indictment. The Court is under no obligation to accept any recommendations made by the  
10 government, and the Court may in its discretion impose any sentence it deems appropriate up to and  
11 including the statutory maximum stated in this plea agreement.

12 If the Court should impose any sentence up to the maximum established by the statute, the  
13 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all  
14 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,  
15 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will  
16 receive.

17 **II. DEFENDANT'S OBLIGATIONS**

18 **A. Guilty Plea**

19 The defendant will plead guilty to Conspiracy to Manufacture, to Distribute, and to Possess with  
20 Intent to Distribute 50 or More Marijuana Plants, as charged in Count One. The defendant agrees that  
21 he is in fact guilty of these charges and that the facts set forth in the Factual Basis For Plea attached  
22 hereto as Exhibit A are accurate.

23 The defendant agrees that this plea agreement will be filed with the Court and become a part of  
24 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his  
25 plea should the Court not follow the government's sentencing recommendations.

26 The defendant agrees that the statements made by him in signing this Agreement, including the  
27 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by  
28 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a

1 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal  
2 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these  
3 rules are inconsistent with this paragraph or with this Agreement generally.

4 The defendant acknowledges that the crime to which he is pleading guilty is listed in 18 U.S.C.  
5 § 3143(a)(2), and agrees that he will be remanded into custody upon the entry of his plea.

6 **B. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

7 If the defendant, violates this plea agreement in any way, withdraws his plea, or tries to withdraw  
8 his plea, this plea agreement is voidable at the option of the government. The government will no longer  
9 be bound by its representations to the defendant concerning the limits on criminal prosecution and  
10 sentencing as set forth herein. One way a defendant violates the plea agreement is to commit any crime  
11 or provide any statement or testimony which proves to be knowingly false, misleading, or materially  
12 incomplete. Any post-plea conduct by a defendant constituting obstruction of justice will also be a  
13 violation of the agreement. The determination whether the defendant has violated the plea agreement  
14 shall be decided under a probable cause standard.

15 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the  
16 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded  
17 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file  
18 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter  
19 be subject to prosecution for any federal criminal violation of which the government has knowledge,  
20 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these  
21 options is solely in the discretion of the United States Attorney's Office.

22 By signing this plea agreement, the defendant agrees to waive any objections, motions, and  
23 defenses that the defendant might have to the government's decision to exercise the options stated in the  
24 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as  
25 of the date of this plea agreement may be commenced in accordance with this paragraph,  
26 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement  
27 and the commencement of any such prosecutions. The defendant agrees not to raise any objections  
28 based on the passage of time with respect to such counts including, but not limited to, any statutes of

1 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth  
2 Amendment to any counts that were not time-barred as of the date of this plea agreement.

3 In addition: (1) all statements made by the defendant to the government or other designated law  
4 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,  
5 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or  
6 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no  
7 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal  
8 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by  
9 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.  
10 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

11 **C. Forfeiture**

12 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right  
13 title and interest to any and all assets subject to forfeiture pursuant to 21 U.S.C. 853. Those assets  
14 include, but are not limited to, the following:

- 15 1. .22 caliber Marlin rifle, with missing barrel,
- 16 2. .22 caliber Marlin rifle,
- 17 3. One .22 caliber round of ammunition, and
- 18 4. Six .40 caliber rounds of ammunition.

19 The defendant agrees that the listed assets constitutes property that facilitates or is involved in a  
20 violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846.

21 The defendant agrees to fully assist the government in the forfeiture of the listed assets and to  
22 take whatever steps are necessary to pass clear title to the United States. The defendant shall not sell,  
23 transfer, convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed  
24 assets.

25 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,  
26 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of  
27 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a  
28 claim in that forfeiture proceeding.

1 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of  
2 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses  
3 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,  
4 and agrees to waive any claim or defense under the Eighth Amendment to the United States  
5 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,  
6 the State of California or its subdivisions.

7 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any  
8 defenses or defects that may pertain to the forfeiture.

9 **III. THE GOVERNMENT'S OBLIGATIONS**

10 **A. Dismissals**

11 The government agrees to move, at the time of sentencing, to dismiss without prejudice the  
12 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed  
13 count except if this agreement is voided as set forth herein, or as provided in II.B (Defendant's Violation  
14 of Plea Agreement), VI.B (Guidelines Calculations), and VII.B (Waiver of Appeal) herein.

15 **B. Recommendations**

16 **1. Incarceration Range**

17 The government will recommend that the defendant be sentenced to the low end of the  
18 applicable guideline range for his offense level derived from a base offense level of 26, a two-level  
19 minor role reduction and one-level downward variance, as recommended by the government. The  
20 government will not recommend application of the two-level firearm enhancement.

21 **2. Acceptance of responsibility**

22 The government will recommend a two-level reduction (if the offense level is less than 16) or a  
23 three-level reduction (if the offense level reaches 16) in the computation of defendant's offense level if  
24 he clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1.  
25 This includes the defendant meeting with and assisting the probation officer in the preparation of the  
26 pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in  
27 conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the  
28 preparation of the pre-sentence report or during the sentencing proceeding.

1           **C.     Use of Information for Sentencing**

2           The government is free to provide full and accurate information to the Court and the United  
3 States Probation Office (“Probation”), including answering any inquiries made by the Court and/or  
4 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,  
5 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement  
6 bars the government from defending on appeal or collateral review any sentence that the Court may  
7 impose.

8   **IV.     ELEMENTS OF THE OFFENSE**

9           At a trial, the government would have to prove beyond a reasonable doubt the following  
10 elements of the offense(s) to which the defendant is pleading guilty:

11           As to Count One, Conspiracy to Manufacture, to Distribute, and to Possess with Intent to  
12 Distribute 50 or More Marijuana Plants, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846;  
13 and

- 14           1.     There was an agreement between two or more persons to manufacture, to distribute  
15                   and/or to possess with intent to distribute a controlled substance; and  
16           2.     The defendant became a member of this conspiracy knowing of at least one of its  
17                   criminal objectives and intending to help accomplish it.

18           In addition, the government is required to prove the offense involved 50 or more marijuana  
19 plants and that the drug quantity was reasonably foreseeable to him.

20           The defendant fully understands the nature and elements of the crimes charged in the indictment  
21 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with  
22 his attorney.

23   **V.     MAXIMUM SENTENCE**

24           **A.     Maximum penalty**

25           The maximum sentence that the Court can impose is 20 years of incarceration, a fine of \$  
26 1,000,000, a mandatory minimum three-year and a maximum life term of supervised release and a  
27 special assessment of \$100. In addition, the defendant may be ineligible for certain federal and/or state  
28 assistance and/or benefits, pursuant to 21 U.S.C. § 862. By signing this plea agreement, the defendant

1 also agrees that the Court can order the payment of restitution for the full loss caused by the defendant's  
2 wrongful conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged  
3 in the specific counts to which the defendant is pleading guilty. The defendant further agrees, as noted  
4 above, that he will not attempt to discharge in any present or future bankruptcy proceeding any  
5 restitution imposed by the Court.

6 **B. Violations of Supervised Release**

7 The defendant understands that if he violates a condition of supervised release at any time during  
8 the term of supervised release, the Court may revoke the term of supervised release and require the  
9 defendant to serve up to three years of additional imprisonment.

10 **VI. SENTENCING DETERMINATION**

11 **A. Statutory Authority**

12 The defendant understands that the Court must consult the Federal Sentencing Guidelines and  
13 must take them into account when determining a final sentence. The defendant understands that the  
14 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the  
15 Sentencing Guidelines and must take them into account when determining a final sentence. The  
16 defendant understands that the Court will determine a non-binding and advisory guideline sentencing  
17 range for this case pursuant to the Sentencing Guidelines. The defendant further understands that the  
18 Court will consider whether there is a basis for departure from the guideline sentencing range (either  
19 above or below the guideline sentencing range) because there exists an aggravating or mitigating  
20 circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing  
21 Commission in formulating the Guidelines. The defendant further understands that the Court, after  
22 consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable  
23 in light of the factors set forth in 18 U.S.C. § 3553(a).

24 **B. Guideline Calculations**

25 The defendant is free to recommend to the Court whatever sentence he believes is appropriate  
26 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence, other  
27 than as set forth herein.



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**VII. WAIVERS**

**A. Waiver of Constitutional Rights**

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be compelled to incriminate himself.

**B. Waiver of Appeal and Collateral Attack**

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not exceed 240 months. The defendant specifically gives up the right to appeal any order of restitution the Court may impose.

Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant understands that these circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete waiver of all appellate rights.

In addition, regardless of the sentence the defendant receives, the defendant also gives up any right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the rights set forth in paragraph II.B (Defendant's Violation of Plea Agreement) herein.

**C. Waiver of Attorneys' Fees and Costs**

The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-



1 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the  
2 investigation and prosecution of all charges in the above-captioned matter and of any related allegations  
3 (including without limitation any charges to be dismissed pursuant to this plea agreement and any  
4 charges previously dismissed).

5 **D. Impact of Plea on Defendant's Immigration Status**

6 Defendant recognizes that it is a virtual certainty that pleading guilty will have consequences  
7 with respect to his immigration status if his is not a citizen of the United States. Under federal law, a  
8 broad range of crimes are removable offenses, including offense(s) to which the defendant is pleading  
9 guilty. Indeed, because defendant is pleading guilty to a drug trafficking crime, removal is  
10 presumptively mandatory. Removal and other immigration consequences are the subject of a separate  
11 proceeding, however, and defendant understands that no one, including his attorney or the district court,  
12 can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless  
13 affirms that he wants to plead guilty regardless of any immigration consequences that his plea may  
14 entail, even if the consequence is his automatic removal from the United States.

15 **VIII. ENTIRE PLEA AGREEMENT**

16 Other than this plea agreement, no agreement, understanding, promise, or condition between the  
17 government and the defendant exists, nor will such agreement, understanding, promise, or condition  
18 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and  
19 counsel for the United States.

20 **IX. APPROVALS AND SIGNATURES**

21 **A. Defense Counsel**

22 I have read this plea agreement and have discussed it fully with my client. The plea agreement  
23 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to  
24 plead guilty as set forth in this plea agreement.

25 Dated: 3/1/2016

26   
MARINA GONZALES  
27 Counsel for Defendant  
28

1 **B. Defendant**

2 I have read this plea agreement and carefully reviewed every part of it with my attorney. I  
3 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully  
4 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my  
5 case. No other promises or inducements have been made to me, other than those contained in this plea  
6 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.  
7 Finally, I am satisfied with the representation of my attorney in this case.

8 Dated: 3-1-16

Francisco Gomez R.  
FRANCISCO JAVIER GOMEZ-  
RODRIGUEZ, Defendant

10  
11 **C. Court Certified Interpreter/Translator**

12 I declare that I am a court-certified Spanish-English interpreter/translator. On  
13 3-1-16, I read the entire contents of the foregoing plea agreement to FRANCISCO JAVIER  
14 GOMEZ-RODRIGUEZ, translating the document from English to Spanish.

15 Dated: 3-1-16

Anna D. Garcia  
Interpreter/Translator  
ID # 300779

17  
18 **D. Attorney for the United States**

19 I accept and agree to this plea agreement on behalf of the government.

20 Dated: 3/9/16

BENJAMIN B. WAGNER  
United States Attorney

21  
22 By: /s/ KAREN A. ESCOBAR  
KAREN A. ESCOBAR  
Assistant United States Attorney

**EXHIBIT "A"**  
**Factual Basis for Plea**

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

Beginning at a time unknown, but no later than on or about March 1, 2015, and continuing to on or about August 4, 2015, in the Saginaw Creek area of the Sierra National Forest in the County of Madera, the defendant and co-defendants Humberto Ceballos-Rangel, Alejandro Ramirez-Rojo, aka Alejandro Ramires, and Anthony Isaac Santibanez knowingly and intentionally conspired to manufacture, distribute and possess with intent to distribute 5,904 marijuana plants.

Specifically, during this time frame, U.S. Forest Service (USFS) personnel followed a trail down a steep mountain to a marijuana grow site. A camp was situated within several feet of 2,480 live growing marijuana plants, irrigation hose, a large water impoundment and hundreds of discarded and dry marijuana plants under a canopy of trees and bushes. The plants were being individually irrigated by black plastic hose and each hole contained three to five marijuana plants. The USFS also found other interconnected plots with well-worn trails, footprints and irrigation hose all leading back to and starting from the camp area. The total count consisted of 5,904 marijuana plants.

Co-defendant Ceballos-Rangel was found standing in the cooking area of the camp in the midst of one of the marijuana cultivation plots. Ceballos-Rangel was later identified as being the same individual that was captured on film by a trail camera in the area where irrigation hose had been buried. Ceballos-Rangel was captured on film carrying a pick axe.

After Ceballos-Rangel was arrested, he led the officers down to Forest Road 8S41 where the most direct drop point was located and where there were trail cameras. As the USFS was leaving the site, a Chevrolet Silverado that had previously been captured multiple times on trail cameras in the area, including trail cameras at the Road 8S41 drop point, and identified as the primary suspect vehicle used to supply the cultivation site was observed driving toward the grow site about one mile from the Road 8S41 drop point.

Officers stopped the truck and found three occupants: the driver, co-defendant Anthony Isaac Santibanez, and two passengers, defendant Francisco Javier Gomez-Rodriguez and co-defendant Alejandro Ramirez-Rojo. Upon stopping the vehicle, a law enforcement officer (LEO) asked the driver, Santibanez, who spoke English, whether there were any weapons in the vehicle. Santibanez said there was a .22 caliber rifle behind his seat. The LEO then directed the occupants to exit the vehicle and place their hands on the roof of the truck.

Officers found an unloaded .22 caliber rifle behind the back seat of the truck. They also found in the covered bed of the pickup food and supplies, including 450 pounds of fertilizer, and six .40 caliber rounds of ammunition in the truck's ash tray.

Following advice and waiver of his Miranda rights, the defendant said, "I have delivered supplies here four to five times. I helped bury the irrigation hose. I'm here to water the plants."

The cultivation operation encompassed at least five acres of National Forest land. Throughout the grow site, natural vegetation had been cut to accommodate 5,904 marijuana plants and related trails, cooking and sleeping areas. A water reservoir had been dug into the soil to store water for use in the marijuana cultivation. The water in the reservoir had been diverted from a nearby unnamed creek. The soil had significant disturbance throughout the impacted area. In addition, the cleared out area and trails within and leading to the cultivation site are on very steep terrain which can cause soil erosion and sedimentation deposits into the creek during and after rain and/or snow events. There were also several trash pits that had mostly been covered in dirt. Two large net loads of trash, two 5 gallon propane tanks

1 and 2,000 feet of irrigation hose were removed, along with the marijuana plants. They also found  
2 insecticide. Agents estimate several miles of irrigation hose remains buried in the area.

3 Approximately 590 kilograms of marijuana is the amount involved in the defendant's relevant  
4 conduct encompassed in the charge contained in Indictment which could be readily proven by the  
5 government at trial against the defendant.

6 Dated: 3-1-16

Francisco Gómez R.  
FRANCISCO JAVIER GOMEZ-  
RODRIGUEZ, Defendant