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FILED

MAY 10 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY [Signature]
DEPUTY CLERK

12 IN THE UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,
 16
 17 Plaintiff,
 18 v.
 19 BABULAL BERA,
 20 Defendant.

CR-S-16-0097 TLN
 CASE NO. ~~[Enter case number]~~
 PLEA AGREEMENT
 DATE: TBD
 TIME: TBD
 COURT: Hon. Choose An Item.

I. INTRODUCTION

A. Scope of Agreement.

24 The information in this case charges the defendant with violations of 52 U.S.C. § 30116(a)(1)(A)
 25 – Making Excessive Campaign Contributions; and 52 U.S.C. § 30122 – Making Contributions in the
 26 Name of Another. This document contains the complete plea agreement between the United States
 27 Attorney’s Office for the Eastern District of California and the Public Integrity Section, Criminal
 28 Division, United States Department of Justice (collectively the “United States” or “government”) and

1 the defendant regarding this case. This plea agreement is limited to the United States Attorney's Office
2 for the Eastern District of California and the Public Integrity Section, Criminal Division, United States
3 Department of Justice and cannot bind any other federal, state, or local prosecuting, administrative, or
4 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 which may not have been charged in
9 the information. 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 Counts One and Two, charging Making Excessive Campaign
20 Contributions in violation of 52 U.S.C. § 30116(a)(1)(A) and Making Contributions in the Name of
21 Another in violation of 52 U.S.C. § 30122, respectively. The defendant agrees that he is in fact guilty of
22 these charges and that the facts set forth in the Factual Basis for Plea attached hereto as Exhibit A are
23 accurate.

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

27 The defendant agrees that the statements made by him in signing this Agreement, including the
28 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by

1 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
2 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
3 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
4 Agreement generally.

5 1. Waiver of Indictment:

6 The defendant acknowledges that under the United States Constitution he is entitled to be
7 indicted by a grand jury on the charges to which he is pleading guilty and that pursuant to Fed.R.Crim.P.
8 7(b) he agrees to waive any and all rights he has to being prosecuted by way of indictment to the charges
9 set forth in the information. The defendant agrees that at a time set by the Court, he will sign a written
10 waiver of prosecution by Indictment and consent to proceed by Information rather than by Indictment.

11 **B. Fine.**

12 The defendant agrees to pay a statutorily authorized criminal fine as ordered by the Court.

13 **C. Special Assessment.**

14 The defendant agrees to pay a special assessment of \$200 at the time of sentencing by delivering
15 a check or money order payable to the United States District Court to the United States Probation Office
16 immediately before the sentencing hearing. The defendant understands that this plea agreement is
17 voidable at the option of the government if he fails to pay the assessment prior to that hearing.

18 **D. Violation of Plea Agreement by Defendant/Withdrawal of Pleas.**

19 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
20 his plea, this plea agreement is voidable at the option of the government. If the government elects to
21 void the agreement based on the defendant's violation, the government will no longer be bound by its
22 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
23 forth herein. A defendant violates the plea agreement by committing any crime or providing or
24 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
25 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
26 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
27 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
28 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)

1 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
2 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
3 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
4 any federal criminal violation of which the government has knowledge. The decision to pursue any or
5 all of these options is solely in the discretion of the United States Attorney's Office.

6 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
7 defenses that the defendant might have to the government's decision. Any prosecutions that are not
8 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
9 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
10 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
11 The defendant agrees not to raise any objections based on the passage of time with respect to such
12 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
13 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
14 of the date of this plea agreement. The determination of whether the defendant has violated the plea
15 agreement will be under a probable cause standard.

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

24 **E. Asset Disclosure.**

25 The defendant agrees to make a full and complete disclosure of his assets and financial
26 condition, and will complete the United States Attorney's Office's "Authorization to Release
27 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
28 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order

1 to that effect. The defendant understands that if he fails to complete truthfully and provide the described
2 documentation to the United States Attorney's office within the allotted time, he will be considered in
3 violation of the agreement, and the government shall be entitled to the remedies set forth in section II.D
4 above.

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

6 **A. Recommendations.**

7 **1. Incarceration Range.**

8 The government agrees that any sentence of incarceration that it recommends to the Court will
9 be for a term of 30 months or less.

10 **2. Acceptance of Responsibility.**

11 The government will recommend a two-level reduction (if the offense level is less than 16) or a
12 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
13 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
14 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
15 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
16 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
17 preparation of the pre-sentence report or during the sentencing proceeding.

18 **B. Use of Information for Sentencing.**

19 The government is free to provide full and accurate information to the Court and Probation,
20 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
21 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
22 understands and agrees that nothing in this Plea Agreement bars the government from defending on
23 appeal or collateral review any sentence that the Court may impose.

24 **C. Further Prosecutions.**

25 If the court accepts the defendant's plea of guilty and the defendant fulfills each of the terms and
26 conditions of this agreement, the United States agrees that it will not further prosecute the defendant for
27 any crimes described in the attached Factual Basis or for any conduct of the defendant now known to the
28 United States and to the law enforcement agents working with the United States on the present

1 investigation. In addition, the government previously informed the defendant that it did not intend to
2 prosecute the defendant's wife, Kanta Bera. The United States hereby affirms that and agrees that it will
3 not prosecute Kanta Bera for any crimes described in the attached Factual Basis or for any conduct of
4 Kanta Bera now known to the United States and to the law enforcement agents working with the United
5 States on the present investigation. Nothing in this agreement is intended to provide any limitation of
6 liability arising out of any acts of violence.

7 **IV. ELEMENTS OF THE OFFENSE**

8 At a trial, the government would have to prove beyond a reasonable doubt the following
9 elements of the offenses to which the defendant is pleading guilty, Making Excessive Campaign
10 Contributions in violation of 52 U.S.C. § 30116(a)(1)(A), and Making Contributions in the Name of
11 Another, in violation of 52 U.S.C. § 30122. To establish a violation of § 30116(a)(1)(A), the
12 government must prove:

13 First, the defendant knowingly and willfully made a financial contribution or contributions to a
14 candidate or the candidate's authorized political committees;

15 Second, the contributions were made with respect to an election for a federal office being sought
16 by the candidate: and

17 Third, the total contribution or contributions made over the course of one calendar year exceeded
18 the limit set for that calendar year under the Federal Election Campaign Act.

19 To establish a violation of § 30122, the government must prove:

20 First, the defendant knowingly and willfully provided a thing of value to another person,

21 Second, the thing of value was provided for the purpose of causing the other person to make
22 campaign contribution in the other person's name; and

23 Third, the campaign contribution was made to a candidate or candidate's authorized political
24 committees with respect to an election for federal office being sought by the candidate.

25 The defendant fully understands the nature and elements of the crimes charged in the information
26 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
27 his attorney.

1 V. MAXIMUM SENTENCE

2 A. Maximum Penalty.

3 The maximum sentence that the Court can impose on Count One is five years of incarceration, a
4 fine of \$250,000, a three year period of supervised release and a special assessment of \$100.

5 The maximum sentence that the Court can impose on Count Two is five years of incarceration, a
6 three year period of supervised release and a special assessment of \$100. If a fine is imposed under
7 Count Two, it shall be in an amount of not less than 300 percent of the amount involved in the violation,
8 and not more than the greater of either \$50,000 or 1,000 percent of the amount involved in the violation
9 (52 U.S.C. 30109(d)(1)(D)(ii)). The Court is required to impose either a sentence of incarceration or a
10 fine, or both under Count Two. With respect to any fine the Court may impose under Count Two, the
11 parties agree that the amount involved in the violation for the purpose of calculating that fine is \$43,400.

12 B. Violations of Supervised Release.

13 The defendant understands that if he violates a condition of supervised release at any time during
14 the term of supervised release, the Court may revoke the term of supervised release and require the
15 defendant to serve up to two additional years of imprisonment.

16 VI. SENTENCING DETERMINATION

17 A. Statutory Authority.

18 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
19 must take them into account when determining a final sentence. The defendant understands that the
20 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
21 Sentencing Guidelines and must take them into account when determining a final sentence. The
22 defendant further understands that the Court will consider whether there is a basis for departure from the
23 guideline sentencing range (either above or below the guideline sentencing range) because there exists
24 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
25 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
26 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
27 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).
28

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

4 If the defendant ever attempts to vacate his pleas, dismiss the underlying charges, or modify or
5 set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the
6 rights set forth in Section II.D herein.

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

8 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
9 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
10 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
11 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
12 charges previously dismissed).

13 **VIII. ENTIRE PLEA AGREEMENT**

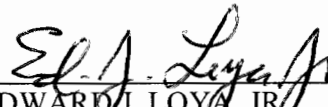
14 Other than this plea agreement, no agreement, understanding, promise, or condition between the
15 government and the defendant exists, nor will such agreement, understanding, promise, or condition
16 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and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

18 **IX. APPROVALS AND SIGNATURES**

19 **A. Defense Counsel.**

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

23 Dated: 5/2/16

24 
EDWARD J. LOYD, JR.
Attorney for Defendant

25
26 **B. Defendant:**

27 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
28 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully

1 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
2 case. No other promises or inducements have been made to me, other than those contained in this plea
3 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.
4 Finally, I am satisfied with the representation of my attorney in this case.

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Dated: *May 2, 2016*


BABULAL BERA
Defendant

C. Attorneys for United States:

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

Dated: *May 10, 2016*

BENJAMIN B. WAGNER
United States Attorney


JOHN K. VINCENT
Assistant United States Attorney

Dated:

RAYMOND N. HUSLER
Chief, Public Integrity Section



RICHARD B. EVANS
Trial Attorney
United States Department of Justice
Public Integrity Section
1400 New York Ave. NW, Suite 12100
Washington, DC 20005

EXHIBIT "A"
Factual Basis for Pleas

The parties agree that the following is true and that if this matter were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt.

In 2010 and 2012 the defendant's son was a candidate for a seat in the United States Congress representing District 3 (2010) and District 7 (2012) from the State of California. With respect to both elections, the candidate's official federal campaign committee ("committee") was headquartered in Elk Grove, California, within the Eastern District of California. With respect to both elections, the defendant made the maximum allowable individual contributions to his son's campaign. Also with respect to both elections, the defendant recruited, solicited, and utilized friends, family members and acquaintances to make financial contributions to his son's campaign, which the defendant then reimbursed to these contributors with his own funds. The defendant did this to make contributions to his son's campaign in excess of the contribution limits established by federal law. With respect to the 2010 and 2012 elections, the government has identified over 130 improper campaign contributions involving approximately 90 contributors.

On or about April 4, 2009, and May 4, 2009, defendant and his spouse each made contributions totaling \$4,800 to the committee thereby reaching their individual contribution limits allowed by the Election Act to the committee for the 2010 election. With respect to the 2010 election, the defendant directly and indirectly solicited relatives, friends and acquaintances to make the maximum allowable federal campaign contributions, with the understanding that he would reimburse them in whole or in part. From approximately May 11, 2009, through at least August 20, 2010, these individuals contributed a total of approximately \$225,326 to the committee. These individuals received full or partial reimbursements for their contributions from the defendant in an amount totaling over \$220,000.

On or about January 5, 2011, defendant and his spouse each contributed \$5,000 to the committee thereby reaching their individual contribution limits allowed by the Election Act to the committee for the 2012 election. With respect to the 2012 election, the defendant again directly and indirectly solicited relatives, friends and acquaintances to make the maximum allowable federal campaign contributions, with the understanding that he would reimburse them in whole or in part. From at least January 31, 2011, and continuing through at least December 5, 2011, these individuals contributed a total of approximately \$43,400 to the committee. These individuals received full reimbursement for their contributions in the form of funds that originated from the defendant. These were delivered to the individuals either by the defendant directly or through third parties working at the defendant's behest.

As an example, in 2009, Person 1 received a telephone call from the defendant who asked Person 1 to contribute to the campaign. Person 1 explained that while he wanted to contribute, he and his wife could not afford to do so. The defendant told Person 1 that the defendant would give him the money to contribute, and that Person 1 should contribute the maximum amount allowable. On May 15, 2009, the defendant arranged for a check in the amount of \$4,700 to be made out to Person 1. The check was drawn on one of the defendant's personal accounts. On May 17, 2009, the defendant signed a check made out to Person 1 in the amount of \$4,200. This check was drawn on a different personal account. Person 1 received these checks in the mail, and he subsequently mailed contribution checks to the campaign's headquarters in Elk Grove, California. On June 1, 2009, Person 1 wrote out two checks to the official federal campaign committee for the defendant's son. Both of these checks were in the amount of \$4,800, and one was signed by Person 1 and one was signed by Person 1's wife.

Similarly, in 2011 Person 1 again contributed to the campaign, and again was reimbursed by the defendant. On August 14, 2011, the defendant signed a check made out to Person 1 in the amount of \$4,000. On August 15, 2011, the defendant signed a check made out to Person 1 in the amount of \$5,600. Both of these checks were drawn on one of the defendant's business accounts. Person 1 received these checks in the mail, and he subsequently mailed contribution checks to the campaign's headquarters in Elk Grove, California. On August 25, 2011, Person 1 wrote out two checks to the

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1 official federal campaign committee for the defendant's son. Both of these checks were in the amount
2 of \$4,800, and one was signed by Person 1, and one was signed by Person 1's wife. On October 14,
3 2011, the official federal campaign committee filed a quarterly contribution report with the Federal
4 Election Committee, as required by law. That report listed the two contributions received from Person 1
5 and his wife, and identified Person 1 and his wife as the contributors.

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