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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 JONATHAN CORNELIUS BOURNE,
15 Defendant.
16

CASE NO. 1:15-CR-00253-LJO-SKO
PLEA AGREEMENT
DATE: August 15, 2016
TIME: 9:30 a.m.
COURT: Hon. Lawrence J. O'Neill

17 **I. INTRODUCTION**

18 **A. Scope of Agreement**

19 The indictment in this case charges the defendant with a violation of 16 U.S.C § 470ee(a), (b)
20 and (d) – Unlawful Transportation of Archeological Resources Removed From Public Lands (8 counts);
21 16 U.S.C § 470ee(a) and (d) – Unlawful Excavation, Removal, Damage, or Defacement of
22 Archeological Resources Removed From Public Lands (6 counts); 18 U.S.C. § 1361 – Injury or
23 Depredation to Government Property (6 counts); 18 U.S.C. § 641 – Possession of Stolen Government
24 Property; and 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture. This document
25 contains the complete plea agreement between the United States Attorney’s Office for the Eastern
26 District of California (the “government”) and the defendant regarding this case. This plea agreement is
27 limited to the United States Attorney’s Office for the Eastern District of California and cannot bind any
28 other federal, state, or local prosecuting, administrative, or regulatory authorities.

1 **B. Court Not a Party**

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

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

13 **II. DEFENDANT'S OBLIGATIONS**

14 **A. Guilty Plea**

15 The defendant will plead guilty to Count Four of the Indictment alleging a violation of 16 U.S.C.
16 § 470ee(a), (b) and (d) – unauthorized transportation of archeological resources, and Count Twelve of
17 the Indictment alleging a violation of 16 U.S.C. § 470ee(a) and (d) – unauthorized excavation, removal,
18 damage, or defacement of archeological resources. The defendant agrees that he is in fact guilty of these
19 charges and that the facts set forth in the Factual Basis For Plea attached hereto as Exhibit A are
20 accurate.

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

24 The defendant agrees that the statements made by him in signing this Agreement, including the
25 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
26 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
27 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal
28 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these

1 rules are inconsistent with this paragraph or with this Agreement generally.

2 **B. Restitution**

3 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
4 certain offenses. The defendant agrees the conduct to which he is pleading guilty requires mandatory
5 restitution pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii), and agrees to pay restitution in the amount of
6 \$249,872.31 to the United States in full at or before the time of sentencing. Payment of restitution shall
7 be to the Clerk of the Court for the Eastern District of California.

8 1. The cost of restoration and repair including the cost of long term curation and storage for
9 the cultural heritage resources named in the indictment is \$44,274.87.

10 2. The cost of restoration and repair including the cost of long term curation and storage for
11 the estimated 20,000 cultural heritage resources found in defendant's Mammoth residence on or about
12 December 13, 2014 is \$205,597.44.

13 Defendant further agrees that he will not seek to discharge any restitution obligation or any part
14 of such obligation in any bankruptcy proceeding.

15 **C. Sentencing Recommendations**

16 The defendant understands that the government will recommend no initial time in custody. The
17 defendant and the counsel may recommend whatever sentence they deem appropriate.

18 **D. Ban From Public Lands**

19 The defendant agrees to the following ban from public lands:

20 1. The defendant is banned from entering public lands administered by the National Park
21 Service, United States Forest Service, Bureau of Land Management and U.S. Army Corps of Engineers,
22 hereinafter public lands for recreational purposes during the period of Supervised Release or Probation.

23 2. Public lands within a one (1) mile radius of his principal residence in Mammoth, CA are
24 excluded from this ban. Defendant is banned from the Mammoth Mountain downhill and cross country
25 ski areas even if those areas are within the one (1) mile exemption.

26 3. The defendant is also banned from collecting of mushrooms and other flora and fauna
27 from public lands whether or not within the one (1) mile exclusion.

28 4. The only exceptions to this entrance prohibition to lands set forth in II (D)(1) are travel to

1 or from other destinations or for non-recreational purposes. Non-recreational purposes include those for
2 employment, providing medical care, participating in organized search and rescue training, and search
3 and rescue call-outs.

4 **E. Fine**

5 The defendant agrees to pay \$40,000.00 as a criminal fine (\$20,000 per count) on or before the
6 time ordered by the Court. The defendant understands that this plea agreement is voidable at the option
7 of the government if he fails to pay the stipulated fine as required by this plea agreement.

8 **F. Special Assessment**

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

13 **G. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

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

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

1 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
2 defenses that the defendant might have to the government's decision to exercise the options stated in the
3 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as
4 of the date of this plea agreement may be commenced in accordance with this paragraph,
5 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement
6 and the commencement of any such prosecutions. The defendant agrees not to raise any objections
7 based on the passage of time with respect to such counts including, but not limited to, any statutes of
8 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
9 Amendment to any counts that were not time-barred as of the date of this plea agreement.

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

18 **H. Forfeiture and Abandonment**

19 The defendant agrees to forfeit and abandon voluntarily and immediately all of the right title and
20 interest to any and all assets subject to forfeiture pursuant to 16 U.S.C. § 470gg(b)(1). Those assets
21 include, but are not limited to, the following:

- 22 1. All artifacts and cultural heritage resources alleged in the Indictment,
- 23 2. All artifacts and cultural heritage resources turned over to investigators on or about
24 December 13, 2014;

25 The defendant agrees that the assets charged in the Indictment constitute archaeological
26 resources with respect to which a violation of 16 U.S.C. § 470ee(a), (b), and (d) occurred.

27 The defendant further agrees that for asset forfeiture and restitution purposes, the remaining
28 assets that the defendant has agreed to forfeit constitute archaeological resources with respect to which a

1 violation of 16 U.S.C. § 470ee(a), (b), and (d) occurred.

2 The defendant agrees to forever surrender his interest in the assets and understands that any
3 interest he may have in the assets will cease at sentencing. The defendant understands that the United
4 States may forfeit the assets by way of final order of forfeiture or may terminate the forfeiture and
5 instead transfer the assets without a final order of forfeiture to any third party, such as the California
6 Native American Heritage Commission, for any purpose, including without limitation, curation and/or
7 repatriation. The defendant agrees that his interest in the assets will cease at sentencing and that he will
8 have no further interest in the assets at such time regardless of how the United States seeks to proceed
9 with the assets' disposition – whether by way of forfeiture or otherwise. The defendant agrees to fully
10 assist the government in the forfeiture and abandonment of the assets and to take whatever steps are
11 necessary to pass clear title to the United States.

12 The defendant agrees not to file any motion or civil action regarding any of the listed property.
13 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,
14 administrative or judicial, which may be initiated. The defendant agrees to waive the right to notice of
15 any proceeding involving this property, and agrees to not file a claim or assist others in filing a claim in
16 that proceeding.

17 The defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture and
18 abandonment of the assets. The defendant knowingly and voluntarily waives all constitutional, legal and
19 equitable defenses to the forfeiture and abandonment of these assets in any proceeding. The defendant
20 agrees to waive any jeopardy defense, and agrees to waive any claim or defense under the Eighth
21 Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture
22 and abandonment of the assets by the United States, the State of California or its subdivisions. The
23 defendant waives oral pronouncement of forfeiture and abandonment at the time of sentencing, and any
24 defenses or defects that may pertain to the forfeiture and abandonment.

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

26 **A. Dismissals**

27 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
28 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed

1 count except if this agreement is voided as set forth herein, or as provided in II.G (Defendant's Violation
2 of Plea Agreement), VI.B (Guidelines Calculations), and VII.B (Waiver of Appeal) herein.

3 **B. Recommendations**

4 1. Incarceration Range

5 The government will recommend that the defendant be sentenced to no initial time in custody.
6 The government may recommend whatever it deems appropriate as to all other aspects of sentencing.

7 2. Acceptance of responsibility

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

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

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

22 **IV. ELEMENTS OF THE OFFENSE**

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

25 As to Count Four, unauthorized transportation of archeological resources, in violation of 16
26 U.S.C. § 470ee(a), (b) and (d):

27 1. The defendant knowingly transported Glass Trade Beads knowing they were of
28 archeological interest and at least 100 years old;

VI. SENTENCING DETERMINATION

A. Statutory Authority

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

B. Guideline Calculations

1. The parties agree that for the purpose of guideline calculation only, the archeological value and the cost of restoration and repair of the involved cultural heritage resources is between \$40,000 and \$95,000. The archeological value for the cultural heritage resources named in the indictment is \$62,314.21.

2. The government and the defendant agree that the following is their present best estimate of the sentencing guidelines variables. These estimates shall not be binding on the Court, the Probation Office, or the parties:

<u>Base Offense Level:</u>	+8	(§2B5.1)
<u>Specific Offense Characteristics:</u>	+6	(§2.1.1(b)(1)(D); §2B1.5(b)(2))
Cultural heritage resource from National Park System:	+2	(§2B1.5(b)(2))
Offense involved funerary object:	+2	(§2B1.5(b)(3)(B))
Pattern of misconduct involving cultural heritage resources:	+2	(§2B1.5(b)(5))
Adjusted Offense Level:	20	
<u>Acceptance of Responsibility:</u>	-3	
<i>Criminal History Category: I</i>		
The parties agree the defendant has no criminal convictions		
Sentencing Range:		<u>17/I = 24-30 months</u>

1 The defendant agrees that the following enhancements apply:

- 2 a. The offense involved cultural heritage resources from the National Park System
3 (§2B1.5(b)(2)).
- 4 b. The offense involved a funerary object (§2B1.5(b)(3)(B)).
- 5 c. The offenses involved a pattern of misconduct involving cultural heritage
6 resources (§2B1.5(b)(5)).

7 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
8 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence.

9 **VII. WAIVERS**

10 **A. Waiver of Constitutional Rights**

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

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

17 The defendant understands that the law gives the defendant a right to appeal the guilty plea,
18 conviction, and sentence. The defendant agrees as part of the plea/pleas, however, to give up the right to
19 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
20 exceed 48 months. The defendant specifically gives up the right to appeal any order of restitution the
21 Court may impose.

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

27 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
28 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any

1 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

2 Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will
3 move to dismiss counts against the defendant, if the defendant ever attempts to vacate the plea, dismiss
4 the underlying charges, or modify or set aside the sentence on any of the counts to which he is pleading
5 guilty, the government shall have the rights set forth in paragraph II.G (Defendant's Violation of Plea
6 Agreement) 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 **D. Impact of Plea on Defendant's Immigration Status**

14 Defendant recognizes that pleading guilty may have consequences with respect to the
15 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
16 are removable offenses, including offense(s) to which the defendant is pleading guilty. Removal and
17 other immigration consequences are the subject of a separate proceeding, however, and defendant
18 understands that no one, including the attorney or the district court, can predict to a certainty the effect
19 of the conviction on the immigration status. Defendant nevertheless affirms that he wants to plead
20 guilty regardless of any immigration consequences that the plea may entail, even if the consequence is
21 the automatic removal from the United States.

22 **VIII. ENTIRE PLEA AGREEMENT**

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

27 ///

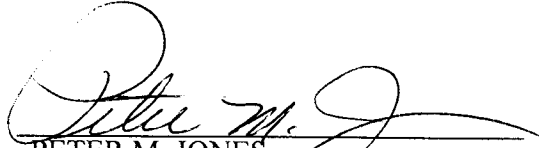
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IX. APPROVALS AND SIGNATURES

A. Defense Counsel

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

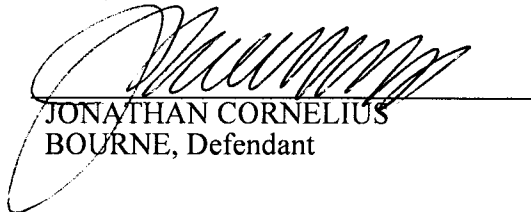
Dated: August 15, 2016


PETER M. JONES
OLIVER W. WANGER
Counsel for Defendant

B. Defendant

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

Dated: August 15, 2016


JONATHAN CORNELIUS
BOURNE, Defendant

C. Attorney for the United States

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

Dated: 08/15/16

PHILLIP A. TALBERT
Acting United States Attorney

By: 15/ Laurel J. Montoya
LAUREL J. MONTOYA
Assistant United States Attorney

EXHIBIT "A"
Factual Basis for Plea

The defendant admits the following facts are true and correct and that if this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

On or about October 14, 2010, defendant Bourne altered a small prehistoric site, cremation site, and burial cairns designated as Whiskey Flat 7 located in the Humbolt-Toiyabe National Forest in Nevada. Defendant Bourne removed Glass Trade Beads from the Whiskey Flat 7 site and transported them to his residence in Mammoth, CA located in the State and Eastern District of California knowing the Glass Trade Beads were more than 100 years old and they were archeological resources. These Glass Trade Beads were found in defendant Bourne's Mammoth residence on or about December 13, 2015. Defendant Bourne admits that the Glass Trade Beads are archeological resources, are more than 100 years old and the archeological value and the cost of restoration and repair exceeds \$500.00.

The area designated as Whiskey Flat 7 in the Humbolt-Toiyabe National Forest is public land administered by the United States Forest Service. Defendant Bourne did not have a permit issued by the United States Forest Service to remove and/or transport the Glass Trade Beads.

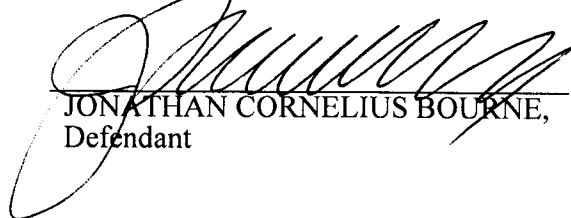
On or about January 10, 2011, defendant Bourne altered a large prehistoric site designated as Vine 1 located in Death Valley National Park, State and Eastern District of California. Defendant Bourne removed a Big Horn Sheep Percussor and three Incised Stone Tablets from the Vine 1 prehistoric site knowing the Big Horn Sheep Percussor and three Incised Stone Tablet were more than 100 years old and they were archeological resources. A Big Horn Sheep Percussor is a short section of horn sheath from a big horn sheep that was shaped into an implement for use in stone tool production. The horn tool was used in the controlled removal of stone flakes from an unfinished tool or blank. The Big Horn Sheep Percussor and three Incised Stone Tablets were found in defendant Bourne's residence on or about December 13, 2015. Defendant Bourne admits that the Big Horn Sheep Percussor and three Incised Stone Tablets are archeological resources, are more than 100 years old, and the archeological value and the cost of restoration and repair exceeds \$500.00.

The Vine 1 prehistoric area in Death Valley National Park is public land administered by the National Park Service. Defendant Bourne did not have a permit issued by the National Park Service to remove and/or transport the Big Horn Sheep Percussor and three Incised Stone Tablets.

The defendant had been collecting artifacts and archeological resources since 1994. The defendant was not collecting these items for profit or commercial purposes. The defendant kept meticulous records documenting what all the items were and where the items were found. The defendant voluntarily turned over to the government an estimated 20,000 archeological resources he had collected from public lands over the years.

All the items turned over to the government will be forfeited and/or abandoned by the defendant and all items will be cataloged, curated, restored, and/or repatriated.

Dated: August 15, 2016


JONATHAN CORNELIUS BOURNE,
Defendant