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 6 Attorneys for Plaintiff
 7 United States of America

8 IN THE UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

10
 11 UNITED STATES OF AMERICA,
 12
 Plaintiff,
 13
 v.
 14 ERIC DRABERT,
 15
 Defendant.

CASE NO. *2:23-CR-00313-TLN*
 PLEA AGREEMENT
 DATE: TBD
 TIME: TBD

16
 17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The Information in this case charges the defendant with violation(s) of 18 U.S.C. § 666 – Theft
 20 Concerning Programs Receiving Federal Funds. This document contains the complete plea agreement
 21 between the United States Attorney’s Office for the Eastern District of California (the “government”)
 22 and the defendant regarding this case. This plea agreement is limited to the United States Attorney’s
 23 Office for the Eastern District of California and cannot bind any other federal, state, or local
 24 prosecuting, administrative, or regulatory authorities.

25 B. Court Not a Party.

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

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

10 Under the provisions of Rule 11(c)(3), the Court may accept or reject the plea agreement, or may
11 defer its decision as to the acceptance or rejection until there has been an opportunity to consider the
12 presentence report. If the Court accepts the plea agreement, the Court will inform the defendant that it
13 will embody in the judgment and sentence the disposition provided for in this plea agreement. If the
14 Court rejects this plea agreement, the Court shall so advise the defendant, allow the defendant the
15 opportunity to withdraw his plea(s), and advise him that if he persists in a guilty plea the disposition of
16 the case may be less favorable to him than is contemplated by this plea agreement.

17 **II. DEFENDANT'S OBLIGATIONS**

18 **A. Guilty Plea.**

19 The defendant will plead guilty to Count 1 – Theft Concerning Programs Receiving Federal
20 Funds. The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the
21 Factual Basis for Plea attached hereto as Exhibit A are accurate.

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

25 The defendant agrees that the statements made by him in signing this Agreement, including the
26 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
27 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
28 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)

1 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
2 Agreement generally.

3 1. Waiver of Indictment:

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

9 **B. Restitution.**

10 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
11 certain offenses. Defendant agrees that his conduct is governed by the Mandatory Restitution Act
12 pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims
13 affected by this offense, including, but not limited to, the victims covered in the factual basis, victims
14 covered in those counts to be dismissed as part of the plea agreement pursuant to 18 U.S.C. §
15 3663A(a)(3), and other victims as a result of the defendant's conduct. The amount of restitution will be
16 between \$200,000 and \$300,000 dollars.

17 Defendant agrees that all criminal monetary penalties imposed by the court, including restitution,
18 will be due in full immediately at time of sentencing and subject to immediate enforcement by the
19 government. Defendant agrees that any payment schedule or plan set by the court is merely a minimum
20 and does not foreclose the United States from collecting all criminal monetary penalties at any time
21 through all available means.

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

24 Defendant shall not sell, encumber, transfer, convey, or otherwise dispose of any of his assets
25 without prior written consent of the United States Attorney, except that the defendant may sell, transfer
26 or convey personal property (including used vehicles and personal items, but not financial instruments,
27 ownership interests in business entities or real property) with an aggregate value of less than \$5,000.

28 Payment of restitution shall be by cashier's or certified check made payable to the Clerk of the

1 Court.

2 **C. Fine.**

3 The parties agree that no fine is appropriate in this case.

4 **D. Special Assessment.**

5 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
6 a check or money order payable to the United States District Court to the United States Probation Office
7 immediately before the sentencing hearing.

8 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

9 If the violates this plea agreement in any way, withdraws his plea, or tries to withdraw his plea,
10 this plea agreement is voidable at the option of the government. If the government elects to void the
11 agreement based on the defendant's violation, the government will no longer be bound by its
12 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
13 forth herein. A defendant violates the plea agreement by committing any crime or providing or
14 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
15 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
16 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
17 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
18 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)
19 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
20 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
21 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
22 any federal criminal violation of which the government has knowledge. The decision to pursue any or
23 all of these options is solely in the discretion of the United States Attorney's Office.

24 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
25 defenses that the defendant might have to the government's decision. Any prosecutions that are not
26 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
27 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
28 limitations between the signing of this plea agreement and the commencement of any such prosecutions.

1 The defendant agrees not to raise any objections based on the passage of time with respect to such
2 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
3 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
4 of the date of this plea agreement. The determination of whether the defendant has violated the plea
5 agreement will be under a probable cause standard.

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

14 **F. Forfeiture.**

15 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right,
16 title, and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), 28
17 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b). Those assets include, but are not limited to, the
18 following:

- 19 1. Real property located at 286 Biring Dr., Arnold, California, Calaveras County,
20 APN: 025-019-002-000; and
- 21 2. A personal money judgment in the amount of \$276,685.15, less any
22 forfeited assets/funds.

23 The defendant agrees that the listed assets constitute property, real or personal which constitutes
24 or is derived from proceeds traceable to a violation of 18 U.S.C. § 666.

25 If the defendant satisfies his full restitution obligation prior to sentencing, the United States
26 agrees to forgo forfeiture.

27 The defendant agrees to fully assist the government in the forfeiture of the listed assets and to
28 take whatever steps are necessary to pass clear title to the United States. Defendant agrees to return a

1 fully executed version of the Stipulation and Consent of Forfeiture together with this plea agreement.
2 Defendant understands and acknowledges that the execution and return of the Stipulation and Consent to
3 Forfeiture is a condition precedent to this plea agreement being effective.

4 The defendant shall not sell, transfer, convey, or otherwise dispose of any of his assets, including
5 but not limited to, the above-listed assets.

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

10 The defendant waives the notice provision of Fed. R. Crim. P. 32.2(a). The defendant knowingly
11 and voluntarily waives his right to a jury trial on the forfeiture of assets. The defendant knowingly and
12 voluntarily waives all constitutional, legal and equitable defenses to the forfeiture of these assets in any
13 proceeding. The defendant agrees to waive any jeopardy defense, and agrees to waive any claim or
14 defense under the Eighth Amendment to the United States Constitution, including any claim of
15 excessive fine, to the forfeiture of the assets by the United States, the State of California or its
16 subdivisions. The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
17 defenses or defects that may pertain to the forfeiture.

18 **G. Asset Disclosure.**

19 The defendant agrees to make a full and complete disclosure of his assets and financial
20 condition, and will complete the United States Attorney's Office's "Authorization to Release
21 Information" and "Financial Disclosure Statement" within three (3) weeks from the entry of the
22 defendant's change of plea, including supporting documentation. The defendant also agrees to have the
23 Court enter an order to that effect. The defendant understands that if he fails to complete truthfully and
24 provide the described documentation to the United States Attorney's Office within the allotted time, he
25 will be considered in violation of the agreement, and the government shall be entitled to the remedies set
26 forth in section II.E above.

27 Defendant expressly authorizes the United States to immediately obtain a credit report to
28 evaluate defendant's ability to satisfy any monetary penalty imposed by the court. Defendant also

1 authorizes the U.S. Attorney's Office to inspect and copy all financial documents and information held
2 by the U.S. Probation Office.

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

4 **A. Dismissals/Other Charges.**

5 The government agrees not to bring any other charges arising from the conduct outlined in the
6 Factual Basis attached hereto as Exhibit A. The government also agrees not to reinstate any dismissed
7 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
8 of Plea Agreement by Defendant/Withdrawal of Plea(s), VI.B (Stipulation Affecting Guideline
9 Calculation), and VII.B (Waiver of Appeal and Collateral Attack) herein.

10 **B. Recommendations.**

11 1. Incarceration Range.

12 The government will recommend that the defendant be sentenced to a sentence within the
13 applicable guideline range as determined by the Court.

14 2. Acceptance of Responsibility.

15 The government will recommend a two-level reduction (if the offense level is less than
16 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if
17 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
18 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
19 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
20 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
21 preparation of the pre-sentence report or during the sentencing proceeding.

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

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

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IV. ELEMENTS OF THE OFFENSE

At a trial, the government would have to prove beyond a reasonable doubt the following elements of the offense(s) to which the defendant is pleading guilty, 18 U.S.C. § 666 – Theft Concerning Programs Receiving Federal Funds:

First, That at the time alleged in the indictment, defendant was an agent of the Patterson Joint Unified School District;

Second, That in a one-year period the Patterson Joint Unified School District received federal benefits in excess of \$10,000;

Third, That defendant stole, embezzled, obtained by fraud and/or knowingly covered property;

Fourth, That the property stolen, embezzled, obtained by fraud and/or knowingly covered was owned by and/or in the care, custody or control of Patterson Joint Unified School District; and

Fifth, That the value of the property stolen, embezzled, obtained by fraud and/or knowingly covered was at least \$5,000.

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

V. MAXIMUM SENTENCE

A. Maximum Penalty.

The maximum sentence that the Court can impose is 10 years of incarceration, a fine of \$250,000, a 3 year period of supervised release and a special assessment of \$100. By signing this plea agreement, the defendant also agrees that the Court can order the payment of restitution for the full loss caused by the defendant’s wrongful conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the specific count(s) to which he is pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the Court.

B. Violations of Supervised Release.

The defendant understands that if he violates a condition of supervised release at any time during the term of supervised release, the Court may revoke the term of supervised release and require the

1 defendant to serve up to 2 additional years imprisonment.

2 **VI. SENTENCING DETERMINATION**

3 **A. Statutory Authority.**

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

14 **B. Stipulations Affecting Guideline Calculation.**

15 The government and the defendant agree that there is no material dispute as to the following
16 sentencing guidelines variables and therefore stipulate to the following:

- 17 1. Base Offense Level: 6 2B1.1(a)(6)
- 18 2. Loss Amount: +12 (\$250,000-\$550,000 - 2B1.1(b)(1)(G))
- 19 3. Specific Offense Characteristics/Adjustments:
20 +2 – Sophisticated means (2B1.1(b)(10))
21 +2 – Abuse of Position of Trust (3B1.3)
- 22 4. Adjusted Offense Level: 22
- 23 5. Acceptance of Responsibility: See paragraph III.B.2 above
- 24 6. Criminal History: The parties estimate, but do not stipulate, that the defendant's criminal
25 history category will be I.
- 26 7. Sentencing Range: 30-37 months (The defendant understands that if the criminal
27 history category differs from the parties' estimate, [his or her] Guidelines sentencing range may differ
28 from that set forth here.)

1 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
2 under 18 U.S.C. § 3553(a).

3 **VII. WAIVERS**

4 **A. Waiver of Constitutional Rights.**

5 The defendant understands that by pleading guilty he is waiving the following constitutional
6 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
7 be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative
8 defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of
9 conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to
10 testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be
11 compelled to incriminate himself.

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

13 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
14 conviction, and sentence. The defendant agrees as part of his plea(s), however, to give up the right to
15 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
16 exceed the statutory maximum(s) for the offense(s) to which he is pleading guilty. The defendant
17 understands that this waiver includes, but is not limited to, any and all constitutional and/or legal
18 challenges to the defendant's conviction and guilty plea, including arguments that the statutes to which
19 defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts
20 attached to this agreement is insufficient to support the defendant's plea of guilty. The defendant
21 specifically gives up the right to appeal any order of restitution the 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 government's agreements in paragraph III.A above, if the defendant ever
3 attempts to vacate his plea(s), dismiss the underlying charges, or modify or set aside his sentence on any
4 of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E
5 herein.

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

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

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

13 Defendant recognizes that pleading guilty may have consequences with respect to his
14 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
15 are removable offenses, including offense(s) to which the defendant is pleading guilty. The defendant
16 and his counsel have discussed the fact that the charge to which the defendant is pleading guilty is an
17 aggravated felony, or a crime that is likely to be determined to be an aggravated felony under 8 USC §
18 1101(a)(43), and that while there may be arguments that defendant can raise in immigration proceedings
19 to avoid or delay removal, it is virtually certain that defendant will be removed. Removal and other
20 immigration consequences are the subject of a separate proceeding, however, and defendant understands
21 that no one, including his attorney or the district court, can predict to a certainty the effect of his
22 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
23 regardless of any immigration consequences that his plea may entail, even if the consequence is his
24 automatic removal from the United States.

25 **VIII. ENTIRE PLEA AGREEMENT**

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

1 counsel for the United States.

2 **IX. APPROVALS AND SIGNATURES**

3 **A. Defense Counsel.**

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

7 Dated: 12/4/2023

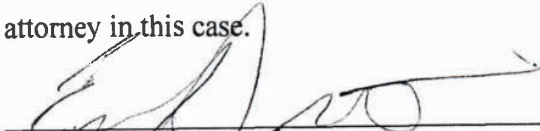


8 REBECKA MONEZ
9 Attorney for Defendant

10 **B. Defendant:**

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

17 Dated: 12/4/23


18 ERIC DRABERT
19 Defendant

20 **C. Attorney for United States:**

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

22 Dated: 12/5/2023

23 PHILLIP A. TALBERT
24 United States Attorney



25 JEFFREY A. SPIVAK
26 Assistant United States Attorney

EXHIBIT "A"

Factual Basis for Plea(s)

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt which the Defendant Eric Drabert agrees are true and correct.

Beginning in/around 2020, and continuing to 2022, Defendant Eric Drabert (DRABERT) served as the Information Technology (IT) Director of Patterson Joint Unified School District (the School District) *which received in each one year period (above) more than \$10,000.00 under a federal program grant and subsidy.*

In/about 2020, co-Defendant Jeffrey Menge (MENGE) created CENCAL TECH LLC, a Nevada limited liability company. MENGE created a fictitious person "Frank Barnes" to serve as a purported executive for CENCAL TECH because DRABERT, as IT Director for the School District, and MENGE, as Assistant Superintendent and Chief Business Officer, were prohibited from engaging in interested party transactions with the School District. MENGE created a CENCAL website, created a false LinkedIn website profile for "Frank Barnes," and created a false CENCAL TECH email account for "Frank Barnes."

Over the course of the next approximately two years, DRABERT and MENGE then conducted over \$1.2 million in interested party transactions with the School District through CENCAL TECH. Many of the roughly \$1.2 million in transactions were fraudulent and involved DRABERT and MENGE intentionally and fraudulently double billing, over billing, and billing for items not delivered by CENCAL TECH to the School District.

DRABERT personally picked up some of the CENCAL TECH checks from the finance department, and told others that he would deliver the checks to the "owner" of CENCAL TECH. DRABERT personally received at least \$200,000 in transfers from the CENCAL TECH Bank of America bank account. DRABERT used some of that money to remodel a cabin in Camp Connell, California.

DRABERT and MENGE mined cryptocurrency using School District property and for their own personal benefit. DRABERT and MENGE used School District funds to purchase expensive laptops with high end graphics cards, removed those graphics cards, and used them and other School District

1 Property and electricity, to operate a cryptocurrency mining farm. They then transferred the
2 cryptocurrency to wallets under their own personal control.

3 In total, DRABERT stole between \$250,000.00-\$300,000.00 from the School District.

4 I, ERIC DRABERT, have read the Factual Basis for the Plea and agree to the facts and
5 stipulations contained therein.
6

7 Dated: 12/4/2023
8



ERIC DRABERT, Defendant