

November, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
v.
XXXXXXXXXXXXXXXXXXXXX,
Criminal No. XX-cr-XXXXXX

THIS IS THE TIME SET FOR THE CHANGE OF PLEA IN THE CASE OF
UNITED STATES v. \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, \_\_:\_\_ \_M

AUSA: \_\_\_\_\_
DEFENSE COUNSEL: \_\_\_\_\_

CHANGE OF PLEA COLLOQUY

1. DEFENDANT, THE COURT IS INFORMED THAT YOU WISH TO PLEAD
GUILTY TO COUNT(S) \_\_\_ OF THE INDICTMENT IN THIS MATTER. IS THAT CORRECT?

MR. BABIK, PLEASE ADMINISTER THE OATH TO THE DEFENDANT.

2. BEFORE ACCEPTING YOUR GUILTY PLEA, THERE ARE A NUMBER OF
QUESTIONS I WILL ASK YOU TO ASSURE THAT IT IS A VALID PLEA. IF YOU DO NOT
UNDERSTAND ANY OF THE QUESTIONS, TELL ME, AND I WILL FURTHER EXPLAIN
THE QUESTION TO YOU; OR IF AT ANY TIME YOU WISH TO CONSULT WITH YOUR
ATTORNEY, PLEASE TELL ME IMMEDIATELY, AND I WILL PROVIDE YOU TIME TO

CONSULT WITH YOUR ATTORNEY IN PRIVATE. I GIVE YOU THESE INSTRUCTIONS BECAUSE IT IS ESSENTIAL TO A VALID PLEA THAT YOU UNDERSTAND EACH QUESTION BEFORE YOU ANSWER.

3. DO YOU UNDERSTAND THAT HAVING DECLARED AND AFFIRMED TO TELL THE TRUTH, YOUR ANSWERS TO MY QUESTIONS ARE SUBJECT TO THE PENALTIES OF PERJURY OR FOR MAKING A FALSE STATEMENT IF YOU DO NOT ANSWER TRUTHFULLY?

4. PLEASE STATE YOUR FULL NAME FOR THE RECORD.

5. DEFENDANT, HOW OLD ARE YOU?

6. HOW FAR DID YOU GO IN SCHOOL?

7. HAVE YOU BEEN ABLE TO COMMUNICATE WITH YOUR LAWYER WITHOUT ANY PROBLEM?

8. DEFENSE COUNSEL, HAVE YOU BEEN ABLE TO COMMUNICATE WITH YOUR CLIENT WITHOUT ANY PROBLEM?

9. DEFENDANT, HAVE YOU TAKEN ANY PRESCRIBED OR NON-PRESCRIBED DRUGS OR CONSUMED ANY ALCOHOL IN THE PAST 24 HOURS?

10. ARE YOU NOW, OR HAVE YOU RECENTLY BEEN, UNDER THE CARE OF A DOCTOR?

11. ARE YOU NOW, OR HAVE YOU RECENTLY BEEN, UNDER THE CARE OF A PSYCHIATRIST OR PSYCHOLOGIST?

12. ARE YOU NOW, OR HAVE YOU RECENTLY BEEN, HOSPITALIZED OR TREATED FOR NARCOTIC OR DRUG ADDICTION OR ABUSE?

13. DEFENDANT, DO YOU UNDERSTAND WHAT IS HAPPENING HERE TODAY?

14. AUSA, DO YOU HAVE ANY DOUBT AS TO THE DEFENDANT'S COMPETENCE TO PARTICIPATE IN THESE PROCEEDINGS OR TO PLEAD GUILTY IF (S)HE SO ELECTS?

15. DEFENSE COUNSEL, DO YOU HAVE ANY DOUBT AS TO THE DEFENDANT'S COMPETENCE TO PARTICIPATE IN THESE PROCEEDINGS OR TO PLEAD GUILTY IF (S)HE SO ELECTS?

(Judge): BASED ON THE ANSWERS PROVIDED BY DEFENDANT, HIS LAWYER, AND THE ATTORNEY FOR THE UNITED STATES, THE COURT FINDS THE DEFENDANT TO BE COMPETENT.

16. DEFENDANT, DO YOU HAVE A LAWYER HERE WITH YOU TODAY? THAT LAWYER IS DEFENSE COUNSEL, CORRECT?

17. HAVE YOU HAD AMPLE OPPORTUNITY AND SUFFICIENT TIME TO DISCUSS YOUR CASE AND THIS PROCEEDING WITH YOUR LAWYER?

18. ARE YOU SATISFIED WITH THE JOB HE/SHE HAS DONE FOR YOU?

19. HAVE YOU BEEN FURNISHED WITH A COPY OF THE CHARGE AGAINST YOU, DEFENDANT? HAVE YOU DISCUSSED WITH YOUR LAWYER THE CHARGE IN THE INDICTMENT, WHICH IS THE CHARGE TO WHICH YOU INTEND TO PLEAD GUILTY?

20. DO YOU UNDERSTAND THAT YOU ARE CHARGED WITH A FELONY/MISDEMEANOR, NAMELY \_\_\_\_\_.

21. DO YOU UNDERSTAND THIS CHARGE AND HAS IT BEEN EXPLAINED TO YOU BY YOUR LAWYER?

(Judge): THE COURT IS NOW READY TO CONSIDER YOUR STATED INTENT TO PLEAD GUILTY TO COUNT(S) \_\_\_ OF THE INDICTMENT.

22. DEFENDANT, DO YOU UNDERSTAND THAT IF YOU WOULD PLEAD NOT GUILTY, YOU WOULD HAVE A RIGHT TO PERSIST IN OR MAINTAIN THAT PLEA, AND TO BE ASSISTED BY A LAWYER AT THE TRIAL AND IN ALL OTHER PHASES OF THE PROCESSING OF THIS CHARGE?

23. DO YOU ALSO UNDERSTAND THAT IF YOU QUALIFY FINANCIALLY, YOU ARE ENTITLED TO BE ASSISTED BY A LAWYER AT NO COST TO YOU AT ALL PHASES OF THE PROCESSING OF THIS CHARGE AGAINST YOU?

24. DO YOU UNDERSTAND THAT UNDER THE CONSTITUTION AND THE LAWS OF THE UNITED STATES, YOU ARE ENTITLED TO A SPEEDY TRIAL BY A JUDGE AND JURY ON THE CHARGE CONTAINED IN THE INDICTMENT?

25. DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO PLEAD NOT GUILTY, AND TO PERSIST IN THAT PLEA?

26. DO YOU UNDERSTAND THAT AT THE TRIAL, YOU WOULD BE PRESUMED TO BE INNOCENT? DO YOU ALSO UNDERSTAND THAT AT THE TRIAL, YOU WOULD NOT HAVE TO PROVE THAT YOU WERE INNOCENT; THE GOVERNMENT WOULD BE REQUIRED TO PROVE YOUR GUILT BY COMPETENT EVIDENCE AND BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE FOUND GUILTY?

27. DO YOU UNDERSTAND THAT AT THE TRIAL, THE JURY MUST BE UNANIMOUS IN ORDER TO FIND YOU GUILTY ON THE CHARGE AGAINST YOU?

28. DO YOU UNDERSTAND THAT YOU WOULD HAVE THE RIGHT TO PARTICIPATE IN THE SELECTION OF THE JURY AND THAT YOU WOULD HAVE THE RIGHT TO STRIKE OR ELIMINATE ANY PROSPECTIVE JUROR IF IT WAS DEMONSTRATED THAT THAT JUROR WAS UNABLE TO RENDER A FAIR AND IMPARTIAL VERDICT? DO YOU ALSO UNDERSTAND THAT, IN ADDITION, YOU WOULD HAVE THE RIGHT TO STRIKE OR ELIMINATE TEN (10) PROSPECTIVE JURORS WITHOUT ASSIGNING ANY REASON AT ALL?

29. DO YOU UNDERSTAND THAT IN THE COURSE OF THE TRIAL, THE WITNESSES FOR THE GOVERNMENT WOULD HAVE TO COME TO COURT AND TESTIFY IN YOUR PRESENCE?

30. DO YOU ALSO UNDERSTAND THAT IN THE COURSE OF TRIAL, YOUR ATTORNEY COULD CROSS-EXAMINE (THAT MEANS QUESTION) THE WITNESSES FOR THE GOVERNMENT, OBJECT TO ANY EVIDENCE OFFERED BY THE GOVERNMENT, AND OFFER EVIDENCE ON YOUR BEHALF?

31. DEFENDANT, DO YOU UNDERSTAND THAT IN THE COURSE OF THE TRIAL THAT IF YOU QUALIFY AS BEING FINANCIALLY UNABLE TO PAY WITNESS FEES TO WITNESSES YOU WISH TO CALL ON YOUR BEHALF, THE GOVERNMENT WOULD PAY THOSE WITNESS FEES?

32. DO YOU ALSO UNDERSTAND THAT AT A TRIAL, YOU WOULD HAVE THE RIGHT TO TESTIFY IF YOU CHOSE TO DO SO?

33. DO YOU UNDERSTAND THAT AT A TRIAL, YOU ALSO WOULD HAVE THE RIGHT NOT TO TESTIFY AND NO INFERENCE OR SUGGESTION OF GUILT COULD BE DRAWN FROM THE FACT THAT YOU DID NOT TESTIFY?

34. DEFENDANT, IF YOU PLEAD GUILTY AND THE COURT ACCEPTS YOUR PLEA, DO YOU UNDERSTAND THAT YOU WILL WAIVE (THAT MEANS GIVE UP) YOUR RIGHT TO A TRIAL AND THE OTHER RIGHTS I HAVE JUST DISCUSSED, THERE WILL BE NO TRIAL, AND THE COURT WILL ENTER A JUDGMENT OF GUILT AND THEN SENTENCE YOU ON THE BASIS OF YOUR GUILTY PLEA AFTER CONSIDERING A PRE-SENTENCE REPORT?

35. DO YOU UNDERSTAND THAT IF YOU PLEAD GUILTY YOU WILL ALSO HAVE TO WAIVE (THAT MEANS GIVE UP) YOUR RIGHT NOT TO INCRIMINATE YOURSELF, SINCE I MAY ASK YOU QUESTIONS ABOUT WHAT YOU DID IN ORDER TO SATISFY THE COURT THAT YOU ARE GUILTY AS CHARGED AND YOU WILL HAVE TO ACKNOWLEDGE YOUR GUILT?

36. HAVING DISCUSSED YOUR RIGHTS WITH YOU, DO YOU STILL WANT TO PLEAD GUILTY?

37. DO YOU UNDERSTAND THAT THE SENTENCING GUIDELINES SET FORTH BY THE UNITED STATES SENTENCING COMMISSION WOULD ONLY BE ADVISORY TO THE COURT? THEREFORE, FOR GOOD REASON, THE COURT MAY SENTENCE YOU OUTSIDE OF THE RECOMMENDED GUIDELINE RANGE BUT WITHIN THE APPLICABLE STATUTORY MINIMUM AND/OR MAXIMUM PENALTIES.

DO YOU ALSO UNDERSTAND THAT THE COURT WILL NOT BE ABLE TO DETERMINE THE ADVISORY GUIDELINES FOR YOUR CASE UNTIL AFTER THE PRE-SENTENCE REPORT HAS BEEN COMPLETED AND YOU AND THE GOVERNMENT HAVE HAD AN OPPORTUNITY TO CHALLENGE THE FACTS REPORTED BY THE PROBATION OFFICER?

DO YOU UNDERSTAND THAT UNDER THE SENTENCING REFORM ACT, PAROLE HAS BEEN ABOLISHED, AND THAT IF YOU ARE SENTENCED TO PRISON, YOU WILL NOT BE ELIGIBLE FOR PAROLE?

DO YOU UNDERSTAND THAT IF THE SENTENCE IMPOSED IS MORE SERIOUS OR SEVERE THAN YOU MIGHT HAVE EXPECTED, YOU WILL STILL BE BOUND BY YOUR PLEA AND WILL HAVE NO RIGHT TO WITHDRAW IT ON THAT BASIS?

DO YOU UNDERSTAND THAT IN DETERMINING YOUR SENTENCE, THE COURT WILL BE OBLIGATED TO CALCULATE THE APPLICABLE SENTENCING GUIDELINE RANGE AND TO CONSIDER THAT RANGE, POSSIBLE DEPARTURES UNDER THE SENTENCING GUIDELINES, AND OTHER SENTENCING FACTORS UNDER TITLE 18, UNITED STATES CODE, SECTION 3553(a)?

AT THIS TIME, THE COURT WILL ADVISE YOU CONCERNING THE MINIMUM AND MAXIMUM SENTENCES PROVIDED BY LAW.

38. A. DO YOU UNDERSTAND THAT THE MINIMUM/MAXIMUM SENTENCE TO COUNT(S) \_\_ IS \_\_\_\_\_?

B. DO YOU UNDERSTAND THAT IF THIS COURT WERE TO SENTENCE YOU TO ANY TERM OF IMPRISONMENT, THE COURT MAY ALSO IMPOSE A TERM OF SUPERVISED RELEASE OF NOT MORE THAN AT LEAST \_\_\_\_ YEARS?

C. DO YOU UNDERSTAND THAT IF THIS WOULD BE A SECOND OR SUBSEQUENT FELONY/MISDEMEANOR \_\_\_\_\_ CONVICTION THAT IS FINAL, WHETHER TO A FEDERAL, STATE OR FOREIGN CHARGE, THE MINIMUM/MAXIMUM TERM OF IMPRISONMENT WOULD THEN BE \_\_\_\_\_ YEARS, THE MINIMUM/MAXIMUM FINE \$\_\_\_\_\_, AND THE MINIMUM/MAXIMUM TERM OF SUPERVISED RELEASE WOULD BE \_\_\_\_\_ YEARS?

D. DO YOU UNDERSTAND THAT IF YOU WERE TO VIOLATE THE TERMS OF THE SUPERVISED RELEASE, THE COURT COULD REVOKE THE SUPERVISED RELEASE, YOU WOULD BE INCARCERATED, AND NO CREDIT WOULD BE GIVEN FOR THE TIME YOU PREVIOUSLY HAD SERVED ON THE TERM OF SUPERVISED RELEASE?

E. IT IS THE COURT'S UNDERSTANDING THAT FORFEITURE IS/IS NOT AN ISSUE IN THIS CASE. IS THAT CORRECT?

F. IT IS THE COURT'S UNDERSTANDING THAT RESTITUTION IS/IS NOT AN ISSUE IN THIS CASE. IS THAT CORRECT?

G. DO YOU UNDERSTAND THAT THE SENTENCE IMPOSED WILL INCLUDE A SPECIAL ASSESSMENT OF \$100.00 PER COUNT OF CONVICTION PURSUANT TO TITLE 18, UNITED STATES CODE, SECTION 3013?

39. DO YOU UNDERSTAND THAT THE OFFENSE TO WHICH YOU ARE PLEADING GUILTY IS A FELONY/MISDEMEANOR OFFENSE; THAT IF YOUR PLEA IS

ACCEPTED, YOU WILL BE ADJUDGED GUILTY OF THE OFFENSE; AND THAT SUCH AN ADJUDICATION MAY DEPRIVE YOU OF VALUABLE RIGHTS, SUCH AS THE RIGHT TO VOTE, TO CERTAIN EMPLOYMENT OPPORTUNITIES, THE RIGHT TO HOLD PUBLIC OFFICE, THE RIGHT TO SERVE ON A JURY, AND THE RIGHT TO POSSESS ANY KIND OF FIREARM? ARE YOU A CITIZEN OF THE UNITED STATES? WHERE WERE YOU BORN? YOU MUST UNDERSTAND THAT IF YOU WERE NOT A CITIZEN, YOUR GUILTY PLEA COULD NEGATIVELY AFFECT YOUR IMMIGRATION STATUS, OR LEAD TO ITS REVOCATION, COULD RESULT IN A DENIAL OF CITIZENSHIP, AND/OR DEPORTATION, REMOVAL OR EXCLUSION FROM THE UNITED STATES?

40. DO YOU UNDERSTAND THAT YOUR GUILTY PLEA MIGHT NEGATIVELY AFFECT ANY PROBATION OR PAROLE THAT YOU MAY NOW BE SERVING?

41. DO YOU UNDERSTAND THAT THIS COURT MAY OR MAY NOT APPROVE ANY PLEA AGREEMENT WHICH YOU MIGHT ENTER INTO AND THAT YOU HAVE A DUTY TO DISCLOSE ANY SUCH AGREEMENT. IF YOU DO NOT DISCLOSE THE AGREEMENT NOW, YOU MAY NOT LATER ASSERT THE EXISTENCE OF ANY PLEA NEGOTIATION OR AGREEMENT. IS THERE A PLEA AGREEMENT IN THIS CASE?

(IF NO, PROCEED TO NO. 43B)

42. THE COURT HAS BEEN INFORMED THAT THERE HAS BEEN A PLEA AGREEMENT ENTERED INTO BETWEEN YOU AND YOUR LAWYER AND THE LAWYER FOR THE UNITED STATES. IS THAT CORRECT?

(If yes): AUSA, PLEASE SHOW THE DEFENDANT A COPY OF THE PLEA AGREEMENT LETTER.

- DEFENDANT, HAVE YOU SEEN THIS LETTER BEFORE?
- HAVE YOU READ IT YOURSELF IN ITS ENTIRETY?
- HAS YOUR LAWYER REVIEWED IT WITH YOU?
- DID YOU SIGN THE LAST PAGE OF THAT LETTER?
- AND, BY SIGNING THAT, DID YOU AGREE TO THE TERMS SET FORTH IN THAT LETTER?
- AUSA, BEFORE WE GO TO SIDEBAR, PLEASE REVIEW THE ESSENTIAL TERMS OF THE PLEA AGREEMENT FOR THE COURT AND FOR THE DEFENDANT.

DEFENSE COUNSEL, DO YOU AGREE THAT THE ESSENTIAL TERMS OF THE PLEA AGREEMENT HAVE BEEN CORRECTLY STATED?

DEFENDANT, HAVE YOU HEARD THE TERMS OF THE PLEA AGREEMENT AS REVIEWED FOR YOU BY AUSA?

DEFENDANT, HAS THE ATTORNEY FOR THE UNITED STATES GOVERNMENT CORRECTLY STATED THE PLEA AGREEMENT AS YOU UNDERSTAND IT?

DEFENDANT, DOES THE PLEA AGREEMENT SET FORTH YOUR UNDERSTANDING AND AGREEMENT WITH THE GOVERNMENT CONCERNING THE CHARGE PENDING AGAINST YOU?

DO YOU HAVE ANY OTHER AGREEMENT OR UNDERSTANDING WITH THE UNITED STATES GOVERNMENT CONCERNING THE CHARGE PENDING AGAINST YOU THAT IS NOT SET FORTH IN THE PLEA AGREEMENT?

[IF APPLICABLE: DEFENDANT, DO YOU UNDERSTAND THAT ORDINARILY YOU OR THE GOVERNMENT MAY HAVE THE RIGHT TO APPEAL ANY SENTENCE THE COURT IMPOSES; HOWEVER, THE COURT NOTES THAT IN THE PROVISIONS OF THE PLEA AGREEMENT, YOU AND THE GOVERNMENT AGREED THAT YOU WOULD WAIVE, THAT IS, GIVE UP, YOUR RIGHT TO TAKE A DIRECT APPEAL FROM YOUR CONVICTION OR SENTENCE SUBJECT TO THE FOLLOWING EXCEPTIONS:

(1) IF THE UNITED STATES APPEALS FROM THE SENTENCE, YOU MAY TAKE A DIRECT APPEAL FROM THE SENTENCE IN THAT CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

(2) YOU MAY ALSO TAKE A DIRECT APPEAL FROM THE SENTENCE ONLY ON THE FOLLOWING GROUNDS:

(A) THE SENTENCE EXCEEDS THE APPLICABLE STATUTORY LIMITS SET FORTH IN THE UNITED STATES CODE, OR

(B) THE SENTENCE IMPOSED UNREASONABLY EXCEEDS THE GUIDELINE RANGE DETERMINED BY THE COURT UNDER THE SENTENCING GUIDELINES. DO YOU UNDERSTAND THAT?

TO REPEAT, BY THESE PROVISIONS OF THE PLEA AGREEMENT, YOU ARE GIVING UP THE RIGHT TO APPEAL BOTH THE VALIDITY OF YOUR PLEA OF GUILTY AND EXCEPT AS SPECIFICALLY SET FORTH IN THE PLEA AGREEMENT, YOUR SENTENCE. DO YOU UNDERSTAND THAT?]

HAS ANYONE MADE A THREAT TO YOU OR ANYONE ELSE THAT HAS FORCED YOU TO WAIVE OR GIVE UP THESE RIGHTS?

HAS ANYONE MADE ANY PROMISE TO YOU OTHER THAN THE PROMISES MADE IN THE PLEA AGREEMENT THAT HAS INDUCED YOU TO WAIVE OR GIVE UP THESE RIGHTS?

43A. FEDERAL RULE OF CRIMINAL PROCEDURE 11 PROVIDES IN RELEVANT PART THAT WHEN A PLEA AGREEMENT SPECIFIES THAT AN ATTORNEY FOR THE GOVERNMENT WILL MOVE TO DISMISS CERTAIN CHARGES, OR WILL AGREE THAT A SPECIFIC SENTENCE OR SENTENCING RANGE IS THE APPROPRIATE DISPOSITION OF THE CASE, OR THAT A PARTICULAR PROVISION OF THE SENTENCING GUIDELINES, OR POLICY STATEMENT, OR SENTENCING FACTOR DOES OR DOES NOT APPLY, THE COURT MAY ACCEPT THE AGREEMENT, REJECT IT, OR DEFER A DECISION UNTIL THE COURT HAS REVIEWED THE PRE-SENTENCE REPORT.

43B. I WILL REFER THIS MATTER TO THE PROBATION OFFICE FOR THE PREPARATION OF A PRE-SENTENCE INVESTIGATION REPORT AND RECOMMENDATION. IN THIS CONNECTION, YOU WILL BE INTERVIEWED BY THE PROBATION OFFICE AND THE COURT WILL INSPECT THE REPORT IN ORDER TO DETERMINE AN APPROPRIATE SENTENCE IN YOUR CASE. ARE YOU WILLING TO BE INTERVIEWED BY THE PROBATION OFFICE AND HAVE ME REVIEW THAT REPORT PRIOR TO DETERMINING YOUR SENTENCE?

[ONLY IF PLEA AGREEMENT. THE COURT WILL DEFER ITS DECISION ON ACCEPTANCE OF THE PLEA AGREEMENT UNTIL IT HAS REVIEWED THE PRE-SENTENCE REPORT AND ADDENDUM THERETO THAT WILL BE PREPARED BY THE PROBATION OFFICER.

DEFENDANT, DO YOU UNDERSTAND THAT AFTER REVIEWING THE PRE-SENTENCE INVESTIGATION REPORT AND ANY ADDENDUM THERETO, THIS COURT MAY ACCEPT OR REJECT THE PLEA AGREEMENT IN THIS CASE?

DO YOU UNDERSTAND THAT IF THIS COURT, AFTER REVIEWING THE PRE-SENTENCE INVESTIGATION REPORT AND ADDENDUM THERETO, REJECTS THE PLEA AGREEMENT, THIS COURT WILL NOT BE REQUIRED TO FOLLOW THE PLEA AGREEMENT AND YOU WILL BE GIVEN AN OPPORTUNITY TO WITHDRAW YOUR PLEA AND PROCEED TO A TRIAL ON THE CHARGE CONTAINED IN THE INDICTMENT AT CRIMINAL NO. \_\_\_\_\_?

DO YOU UNDERSTAND THAT IF THIS COURT REJECTS THE PLEA AGREEMENT AND YOU DO NOT WITHDRAW YOUR PLEA, THE COURT MAY DISPOSE OF THIS CASE IN A MANNER LESS FAVORABLE TO YOU THAN THE TERMS SET FORTH IN THE PLEA AGREEMENT?]

43C. YOU MUST UNDERSTAND THAT ANY RECOMMENDATION OF SENTENCE WHICH MAY BE MADE OR AGREED TO BY YOUR LAWYER AND/OR MADE BY THE PROSECUTION, OR ANY AGREEMENT NOT TO OPPOSE YOUR LAWYER'S REQUESTED SENTENCE IS NOT BINDING ON THE COURT AND THAT YOU COULD, ON THE BASIS OF YOUR GUILTY PLEA, RECEIVE UP TO THE MAXIMUM SENTENCE PERMITTED BY LAW?

DO YOU UNDERSTAND THAT IF I DECLINE TO IMPOSE A SENTENCE RECOMMENDED BY THE PROSECUTOR OR RECOMMENDED BY YOUR LAWYER AND

IMPOSE A MORE SERIOUS OR SEVERE SENTENCE, YOU WILL NOT, ON THAT BASIS, BE ENTITLED TO WITHDRAW YOUR GUILTY PLEA?

43D. THE ATTORNEY FOR THE GOVERNMENT WILL NOW PROVIDE THE PLEA AGREEMENT TO MY DEPUTY. [COLLOQUY REGARDING SIGNATURES]

44. AUSA, [OTHER THAN THE PLEA AGREEMENT THAT HAS BEEN PRESENTED HERE TODAY,] DID THE GOVERNMENT TENDER TO COUNSEL FOR THE DEFENDANT ANY [OTHER] FORMAL PLEA AGREEMENT OFFER?

45. DEFENSE COUNSEL, DID YOU RECEIVE ANY FORMAL PLEA AGREEMENT OFFER FROM THE GOVERNMENT THAT YOU DID NOT COMMUNICATE TO THE DEFENDANT?

46. DEFENDANT, HAS ANYONE MADE A THREAT TO YOU OR TO ANYONE ELSE THAT IS CAUSING YOU TO PLEAD GUILTY?

IF YES, WHAT WAS THE THREAT AND WHO MADE IT?

47. DEFENDANT, HAS ANYONE MADE ANY PROMISE (OTHER THAN THOSE IN THE PLEA AGREEMENT) THAT IS CAUSING YOU TO PLEAD GUILTY?

(If yes): WHAT WAS THAT PROMISE AND WHO MADE IT?

48. HAS ANYONE MADE ANY PREDICTION OR PROMISE TO YOU AS TO WHAT YOUR ACTUAL SENTENCE WILL BE OTHER THAN WHAT YOU HAVE BEEN TOLD ABOUT THE MINIMUM OR MAXIMUM POSSIBLE SENTENCE?

(IF YES): WHAT WAS IT AND WHO MADE IT?

49. HAS ANYTHING I HAVE SAID HERE TODAY, OTHER THAN WHAT I HAVE TOLD YOU ABOUT THE MINIMUM OR MAXIMUM SENTENCE, SUGGESTED TO YOU WHAT YOUR ACTUAL SENTENCE WILL BE?

50. HAVE YOU BEEN INSTRUCTED BY YOUR ATTORNEY, THE ATTORNEY FOR THE GOVERNMENT, OR ANYONE ELSE TO RESPOND UNTRUTHFULLY TO ANY QUESTION I HAVE ASKED YOU?

HAVE YOU, IN FACT, ANSWERED TRUTHFULLY TO ALL OF THE QUESTIONS I HAVE ASKED YOU TODAY?

DEFENDANT, DO YOU HAVE ANY PHYSICAL OR MENTAL ILLNESS WHICH WOULD OR MIGHT AFFECT YOUR ABILITY TO UNDERSTAND THESE RIGHTS OR AFFECT THE VOLUNTARY NATURE OF YOUR PLEA?

51. AUSA, WHAT IN SUMMARY WOULD BE THE GOVERNMENT'S EVIDENCE AS TO THIS CHARGE, AND THE ELEMENTS OF THE OFFENSE CHARGED WHICH THE GOVERNMENT MUST PROVE AT TRIAL?

DEFENDANT, IN A MOMENT, I INTEND TO ASK YOU WHETHER YOU AGREE WITH THE GOVERNMENT'S SUMMARY OF WHAT YOU DID. BUT BEFORE I ASK YOU, I MUST ADVISE YOU THAT YOUR ANSWERS MAY LATER BE USED AGAINST YOU IN A PROSECUTION FOR PERJURY OR MAKING A FALSE STATEMENT IF YOU DO NOT ANSWER TRUTHFULLY.

52. DEFENDANT, DO YOU AGREE WITH THE PROSECUTION'S SUMMARY OF WHAT YOU DID?

(If no): WITH WHAT DO YOU DISAGREE?

53. ARE THERE ANY ADDITIONS OR CORRECTIONS YOU WISH TO MAKE?

54. DO YOU STILL WISH TO PLEAD GUILTY?

55. DEFENSE COUNSEL, IS THIS CONSISTENT WITH YOUR ADVICE?

56. MR. /MS. [DEFENDANT], ARE YOU SATISFIED IN ALL RESPECTS WITH THE ADVICE AND REPRESENTATION OF WHICH YOUR LAWYER, DEFENSE COUNSEL, HAS PROVIDED TO YOU?

57. DEFENDANT, DID YOU \_\_\_\_\_  
\_\_\_\_\_, AS SET FORTH IN COUNT(S) \_\_\_ OF THE INDICTMENT FILED AT CRIMINAL NO. \_\_\_\_\_, WHICH I SUMMARIZED FOR YOU A FEW MINUTES AGO? HOW DO YOU PLEAD TO THAT CHARGE?

THE COURT FINDS THAT THE DEFENDANT IS COMPETENT, THAT HE/SHE KNOWS AND UNDERSTANDS HIS/HER RIGHT TO A JURY TRIAL AND THE CONSEQUENCES OF WAIVING THAT RIGHT, AND THAT HE/SHE KNOWS WHAT THE MINIMUM AND MAXIMUM PENALTIES ARE AND THAT THERE IS A FACTUAL BASIS FOR THE PLEA. THE COURT THEREFORE ACCEPTS THE DEFENDANT'S GUILTY PLEA AND HEREBY ADJUDGES [FULL NAME OF DEFENDANT] GUILTY OF THE CRIME SET FORTH IN COUNT \_\_\_ OF THE REFERENCED CRIMINAL INDICTMENT.

DEFENDANT, SINCE YOU ACKNOWLEDGE THAT YOU ARE IN FACT GUILTY AS CHARGED IN COUNT(S) \_\_\_ OF THE INDICTMENT, SINCE YOU KNOW YOUR RIGHT TO A TRIAL, SINCE YOU KNOW WHAT THE MINIMUM AND MAXIMUM POSSIBLE PENALTIES ARE, AND SINCE YOU ARE VOLUNTARILY PLEADING GUILTY, THE COURT ACCEPTS YOUR GUILTY PLEA AND ENTERS A JUDGMENT OF GUILTY ON YOUR PLEA.

(HAVE THE DEFENDANT AND DEFENSE COUNSEL SIGN THE ARRAIGNMENT PLEA AND INTERROGATE ON SIGNATURES.)

THE COURT ORDERS A PRE-SENTENCE INVESTIGATION REPORT TO BE PREPARED BY THE UNITED STATES OFFICE OF PROBATION AND PRETRIAL SERVICES. DEFENDANT, THAT REPORT WILL BE VERY IMPORTANT TO THE COURT IN ITS DECISION AS TO WHAT YOUR SENTENCE WILL BE. PURSUANT TO THE LOCAL RULES OF CRIMINAL PROCEDURE, YOU AND YOUR ATTORNEY WILL HAVE AN OPPORTUNITY TO EXAMINE THE REPORT, AND YOU WILL HAVE THE RIGHT AND THE OPPORTUNITY TO PRESENT INFORMATION TO THE COURT CONCERNING ANY MATTERS IN THE REPORT WHICH YOU DISPUTE. THE UNITED STATES WILL BE AFFORDED THAT SAME OPPORTUNITY.

THE COURT IS CONFIDENT THAT COUNSEL ARE AWARE OF THE PROVISIONS SET FORTH IN THE RULES OF CRIMINAL PROCEDURE CONCERNING THE METHOD OF THE RESOLUTION OF DISPUTES CONCERNING FACTORS RELEVANT TO THE SENTENCING, AND THAT COUNSEL WILL FULLY COMPLY WITH THESE PROVISIONS.

SENTENCING IS SET FOR \_\_\_\_\_ AT \_\_:\_\_\_.M.

DEFENSE COUNSEL, IS THERE ANY OTHER MATTER YOU OR DEFENDANT WISH TO BRING TO MY ATTENTION?

AUSA, IS THERE ANY OTHER MATTER YOU WISH TO BRING TO MY ATTENTION?

[REVIEW CUSTODY STATUS AND TERMS]

THESE PROCEEDINGS ARE ADJOURNED.