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U. S. COURTS
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U.S. DISTRICT COURT
POCATELLO, IDAHO

7 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

9 UNITED STATES OF AMERICA,)
10 Plaintiff,)
11 vs.)
12 PETE A. KARABOYAS,)
13 Defendant.)

Case No. CR 04-0084-E-BLW
RULE 11 PLEA AGREEMENT

14 _____

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(A) of the Federal Rules of
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree that
4 the defendant will plead guilty to Count One of the Superseding Indictment. The defendant
5 acknowledges that the plea is voluntary and did not result from force, threats, or promises, other
6 than any promise made in this plea agreement. More specifically, the parties agree as follows:

7 Count One charges the defendant with conspiracy to manufacture methamphetamine, in
8 violation of Title 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), and 846.

9 **B. Acceptance.** Upon acceptance of the defendant's guilty plea, and the defendant's
10 full compliance with the other terms of this Agreement, including the terms of cooperation set
11 forth below, the Government, agrees that it will dismiss, under Rule 11(c)(1)(A), Count Four of
12 the Superseding Indictment. Defendant acknowledges, agrees and waives objection to the fact that
13 the Court may consider "relevant conduct" including relevant conduct alleged in these dismissed
14 counts in arriving at an appropriate sentence pursuant to Section 1B1.3 of the Sentencing
15 Guidelines.

16 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

17 Defendant understands that he will be placed under oath at the plea hearing and that the
18 government, in a prosecution for perjury or false statement, has the right to use against the
19 defendant any statement that the defendant gives under oath. Moreover, the defendant understands
20 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense charged
21 against the defendant and to persist in that plea; 2) the right to a trial by jury; 3) the right to be
22 represented by counsel, and if necessary, to have the court appoint counsel at trial and at every
23 stage of the proceeding; and 4) the rights, at trial, to confront and cross-examine adverse
24 witnesses, to be protected from compelled self-incrimination, to testify, to present evidence and to

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26 ¹The word "Government" in this Agreement refers to the United States Attorney for the
27 District of Idaho.

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1 compel the attendance of witnesses. The defendant understands that by pleading guilty s/he
2 waives (gives up) all of the rights set forth above. The defendant fully understands that by
3 entering a plea of guilty, if that plea is accepted by the District Court, there will be no trial and
4 defendant will have waived (given up) these trial rights.

5 **III. NATURE OF THE CHARGES**

6 **A. Elements of the Crime.** The elements of the crime of conspiracy to manufacture
7 methamphetamine, as charged in Count One, are as follows:

8 First, beginning on or about May, 1997, and ending on or about February 11, 2003,
9 there was an agreement between two or more persons to commit the crime of
10 manufacturing methamphetamine; and

11 Second, the defendant became a member of the conspiracy knowing of at least one
12 of its objects and intending to help accomplish it.

13
14 **B. Factual Basis.** If this matter were to proceed to trial, the Government and the
15 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts
16 accurately represent the defendant's readily provable offense conduct. This factual summary is not
17 intended to detail all relevant conduct, or cover all specific offense characteristics, which will be
18 determined by the Court after its consideration of the Presentence Report.

19 Beginning on or about May 1997, multiple individuals entered into a conspiracy to
20 manufacture methamphetamine in the Pocatello Idaho area. Sometime between May of 1997, and
21 February 11, 2003, the defendant knowingly became a member of the conspiracy, agreeing to
22 manufacture methamphetamine. As part of the conspiracy co-defendant Troy Hall would provide
23 precursor chemicals to the defendant and others, who would together, and independently,
24 manufacture methamphetamine. During the period that he was a member of the conspiracy, the
25 defendant actually participated in the manufacture of in excess of 15 kilograms of
26 methamphetamine.

1 **IV. SENTENCING FACTORS**

2 **A. Maximum and Minimum Penalties.** A violation of conspiracy to manufacture
3 methamphetamine, as charged in Count One, is punishable by a term of imprisonment of ten years
4 to life imprisonment, a term of supervised release of at least seven years, a maximum fine of
5 \$4,000,000, and a special assessment of \$100.

6 **B. Supervised Release.** Defendant will be sentenced to a term of supervised release,
7 to be served after incarceration, of at least seven years.

8 The defendant's term of supervised release will be a specific (*i.e.*, a determinate) term
9 chosen by the Court at sentencing. The combination of prison time and supervised release is
10 permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) that
11 defendant is pleading guilty to violating. Violation of any condition of supervised release may
12 result in defendant being imprisoned for the entire term of supervised release or being prosecuted
13 for contempt of court under Title 18, United States Code, Section 401(3).

14 **C. Fines and Costs.** Unless the Court determines that the defendant will not
15 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's
16 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The
17 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised
18 release.

19 **D. Special Assessment.** Defendant will pay a special assessment of \$100 per count, in
20 addition to any fine imposed. This assessment will be paid by defendant before sentence is
21 imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the United
22 States District Court, Clerk's Office, Federal Building and United States Courthouse, 550 W. Fort
23 Street, Fourth Floor, Boise, ID 83724.

24 **V. UNITED STATES SENTENCING GUIDELINES:**

25 **A. Application of Sentencing Guidelines.** As consideration for the benefits
26 conferred by this guilty plea, the defendant specifically waives his *Apprendi* rights, that every fact
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1 which is legally essential to punishment be charged in the indictment and proven to a jury, and
2 consents to judicial fact-finding under a preponderance-of-evidence standard, with respect to any
3 sentencing enhancements, following the procedures described in the United States Sentencing
4 Commission Guideline Manual. (See *Blakely v. Washington*, 2004 WL 1402697, *7 (June 24,
5 2004), *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000); *Duncan v. Louisiana*, 391 U.S. 145,
6 158 (1968).

7 Defendant understands that defendant will be sentenced under the Federal Sentencing
8 Guidelines and that: (1) the sentence has not yet been determined by the District Judge; (2) any
9 estimate of the likely sentence received from any source is a prediction and not a promise; and (3)
10 the District Judge has the final authority to decide what the sentence will be.

11 The defendant also understands that the Court will determine the applicable sentencing
12 factors at sentencing and that the Court's determination will affect the sentence range under the
13 Sentencing Guidelines. While the Court may take the defendant's cooperation and the
14 recommendations of the parties into account in determining the sentence to be imposed, the Court
15 has complete discretion to impose a sentence other than the sentence recommended, including the
16 maximum sentence possible for the crimes to which defendant has pled.

17 **B. Sentencing Guidelines Recommendations and Requests.**

18 **1. Acceptance of Responsibility.** Unless the Government learns of new
19 information to the contrary, defendant will be entitled to a reduction of two levels in the combined
20 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant
21 clearly accepts responsibility for the offense. The Government will move for an additional one-
22 level reduction in the combined offense level under section 3E1.1(b) if the following conditions
23 are met: the defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or
24 greater; and the defendant has assisted authorities in the investigation or prosecution of
25 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea
26 of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to
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1 allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant fails
2 to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner
3 inconsistent with acceptance of responsibility, the Government will not make such a
4 recommendation and/or motion or, if one has already been made, it will withdraw the
5 recommendation and/or motion.

6 **2. Downward Departure Request by Defendant.** The defendant will not
7 seek a downward departure without first notifying the Government of defendant's intent to seek a
8 downward departure and defendant's reasons and basis therefor, 21 days before the date set for
9 sentencing.

10 **VI. COOPERATION**

11 **A. Truthful Information and Assistance.** Defendant promises to provide truthful
12 and complete information to the Government and its investigative agencies, including full
13 debriefings and truthful testimony at all proceedings, criminal, civil or administrative, including,
14 but not limited to, grand jury proceedings, trials, and pretrial and post-trial proceedings,
15 concerning defendant's role and the roles of all others involved in the offense or offenses that were
16 part of the same course of conduct or of a common scheme or plan as the offense of conviction. In
17 so doing, the defendant shall neither attempt to protect any person or entity through false
18 information or omission, nor falsely implicate any person. The defendant shall testify truthfully no
19 matter who asks the questions, the prosecutor, judge or defense counsel. It is further understood
20 that the defendant shall be subject to prosecution for perjury and obstruction of justice for any
21 intentional deviation from the truth. The defendant's duty under the terms of this Agreement is to
22 tell the truth whether or not it bolsters the Government's case against any particular individual.
23 The defendant specifically understands that this Agreement is not contingent upon the conviction
24 of any person or the forfeiture of any property.

25 The defendant agrees to cooperate in good faith, meaning that the defendant will not only
26 respond truthfully and completely to all questions asked, but will also volunteer all information
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1 that is reasonably related to the subjects discussed in the debriefings or testimony. In other words,
2 the defendant may not omit facts about crimes, participants, or defendant's involvement, and then
3 claim not to have breached the Agreement because he was not specifically asked questions about
4 those crimes, participants, or involvement. Any actions or statements inconsistent with continued
5 cooperation under this Agreement, including but not limited to, criminal activity, or a statement
6 indicating a refusal to testify, constitutes a breach of this Agreement.

7 Defendant agrees to be available for interviews in preparation of all testimony. If
8 necessary, defendant further agrees to submit, upon request, to government-administered
9 polygraph examinations to verify defendant's full and truthful cooperation.

10 Defendant agrees to identify all property known to defendant, in which defendant or any
11 other person has a legal or equitable interest, that is or was the proceeds of, or acquired with the
12 proceeds of, a drug crime, or that was used in any manner to facilitate a drug crime. Defendant
13 also agrees to identify the extent of any person's or entity's (including defendant's) interest in any
14 such property. The defendant further agrees to assist in the recovery and forfeiture to the United
15 States of any property or property interest which may be forfeitable as the proceeds of criminal
16 activity, or as property which was involved in or facilitated criminal activity, or which is otherwise
17 forfeitable under federal law.

18 **B. Use of Information Against Defendant.** In exchange for defendant's agreement
19 to cooperate with the Government, the Government agrees not to use new information defendant
20 provides (pursuant to this Agreement) about the defendant's own criminal conduct. Such
21 information may be revealed to the Court but may not be used against the defendant in determining
22 defendant's sentence range, choosing a sentence within the range, or departing from the range.
23 There shall be no such restrictions on the use of information: (1) previously known to law
24 enforcement agencies; (2) revealed to law enforcement agencies by, or discoverable through, an
25 independent source; (3) in a prosecution for perjury, obstruction of justice, or giving a false
26 statement; or (4) in the event there is a breach of this Agreement.

1 **C. Substantial Assistance Determination.** Upon the Government's determination
2 that defendant's cooperation amounts to "substantial assistance" in the investigation of others, the
3 Government will request that the Court depart downward from the applicable sentencing range,
4 pursuant to Section 5K1.1 of the Sentencing Guidelines and/or any mandatory minimum sentence
5 pursuant Title 18, United States Code, Section 3553(e). The Government reserves the right to
6 make the sole determination as to whether and when defendant has provided substantial assistance
7 for purposes of the Government's motion for a downward departure. If, in good faith, the
8 Government cannot conclude that the defendant has provided substantial assistance, the
9 Government will not be obligated to move for a downward departure.

10 The Government's final decision whether to file motions pursuant to Section 5K1.1 and/or
11 Title 18, United States Code, Section 3553(c) will be made after evaluating defendant's
12 cooperation with regards to: (1) the significance and usefulness of the defendant's cooperation, (2)
13 the truthfulness, completeness, and reliability of any information or testimony provided by the
14 defendant, (3) the nature and extent of the defendant's assistance, (4) any injury suffered, or any
15 danger or risk of injury to the defendant or defendant's family resulting from defendant's
16 cooperation, and (5) the timeliness of the defendant's cooperation. The Government's specific
17 recommendation will also be contingent upon its evaluation of all the facts of the case, the
18 sentence that would have been imposed absent an Agreement, and the extent and value of the
19 cooperation provided.

20 **D. Defendant's Assumption of Risk.** The defendant agrees that defendant's
21 cooperation is given freely and voluntarily, with a knowledge of the possible consequences of
22 cooperation with the Government. The defendant agrees that defendant's involvement in this case
23 has been made known to defendant's attorney and that he has permission from defendant's
24 attorney to enter into such an agreement. The defendant hereby absolves the Government, any of
25 its political subdivisions and any of its employees from any liability associated with this
26 cooperation, and includes defendant's successors, heirs and assigns.

1 **VII. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

2 The defendant is aware that Title 18, United States Code, Section 3742 affords defendant
3 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the
4 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all
5 appeal rights defendant may have regarding both defendant's conviction and sentence, including
6 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,
7 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect
8 application of the sentencing guidelines to which the defendant filed a proper and timely
9 objection.

10 The defendant is also aware that under certain circumstances a defendant has the right to
11 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to
12 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms
13 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to
14 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any
15 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal
16 claiming ineffective assistance of counsel based upon facts discovered after the entry of
17 defendant's guilty pleas.

18 The defendant further understands that nothing in this Plea Agreement shall affect the
19 Government's right and/or duty to appeal as set forth in Title 18, United States Code,
20 Section 3742(b).

21 **VIII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT.**

22 The defendant agrees to provide all material financial and other information as may be
23 requested by a representative of the United States Probation Office for use in preparing a
24 Presentence Report. Failure to execute releases and/or provide such material information as may
25 be required is a violation of the terms of this Agreement, and will relieve the Government of its
26 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under
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1 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the
2 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for
3 withdrawing the plea of guilty.

4 **IX. NO RIGHT TO WITHDRAW PLEA.**

5 The defendant understands that the Court is not bound to follow any recommendations or
6 requests made by the parties at the time of sentencing. If the Court decides not to follow any of the
7 parties recommendations or requests, the defendant cannot withdraw from this plea agreement or
8 the guilty plea.

9 **X. CONSEQUENCES OF VIOLATING AGREEMENT**

10 **A. Government's Options.** If defendant fails to keep any promise in this Agreement,
11 including any promise to cooperate, or commits a new crime, the Government is relieved of any
12 obligation not to prosecute defendant on other charges, including any charges dismissed as part of
13 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the
14 Government determines after sentence is imposed under this Agreement that defendant's breach of
15 the Agreement warrants further prosecution, the Government will have the choice between letting
16 the conviction under this Plea Agreement stand or vacating such conviction so that such charge
17 may be re-prosecuted. If the Government makes its determination before sentencing, it may
18 withdraw from the Plea Agreement in its entirety.

19 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep
20 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in
21 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed
22 under this Agreement; (2) any right under the Constitution and laws of the United States to be
23 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's
24 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of
25 limitations period for any charge that is brought as a result of defendant's failure to keep this
26 Agreement, and on which the statute of limitations expired after defendant entered into this
27

1 Agreement.

2 Furthermore, the defendant further understands and agrees that if defendant does not enter
3 a valid and acceptable plea, the Government will move to continue the trial now set. The
4 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be
5 excludable time under Title 18, United States Code, Sections 3161(h)(1)(T), (h)(3)(A), or
6 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to prepare
7 for trial.

8 **XI. MISCELLANEOUS**

9 **A. No Other Terms.** This Agreement incorporates the complete understanding
10 between the parties, and no other promises have been made by the Government to the defendant or
11 to the attorney for the defendant. This Agreement does not prevent any governmental agency from
12 pursuing civil or administrative actions against defendant or any property. Unless an exception to
13 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or
14 obligate governmental entities other than the United States Attorney's Office for the District of
15 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring
16 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

17 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned
18 on acceptance of this plea Agreement no later than 5:00 p.m. on August 19, 2004. It is defendant's
19 sole and complete responsibility to notify the U.S. Attorney's Office of the acceptance of this
20 Agreement by the date specified above in order for this offer to be effectively accepted.

1 **XII. UNITED STATES' APPROVAL**

2 I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States
3 that the terms and conditions set forth above are appropriate and are in the best interests of justice.

4 THOMAS E. MOSS
5 UNITED STATES ATTORNEY

6 By:

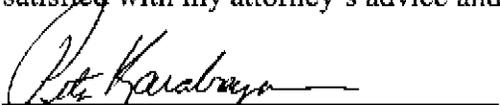


7 MICHAEL J. FICA
8 Assistant United States Attorney

11/2/04
DATE

9 **XIII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

10 A. I have read and carefully reviewed every part of this Plea Agreement with my
11 attorney. I understand the Agreement and its effect upon the potential sentence. Furthermore, I
12 have discussed all of my rights with my attorney and I understand those rights. No other promises
13 or inducements have been made to me, directly or indirectly, by any agent of the Government,
14 including any Assistant United States Attorney, concerning any plea to be entered in this case. In
15 addition, no person has, directly or indirectly, threatened or coerced me to do, or refrain from
16 doing, anything in connection with any aspect of this case, including entering a plea of guilty. I am
17 satisfied with my attorney's advice and representation in this case.



18 PETE A. KARABOYAS
19 Defendant

11/02/04
DATE

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



24 KEVIN C. PETERSON
25 Attorney for the Defendant

11-2-04
DATE