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UNITED STATES COURTS
DISTRICT OF IDAHO

SEP 26 2003

____ M.REC'D ____
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12 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 vs.

17 VICTOR MANUEL CASTILLO-DUARTE (02),

18 Defendant.

Case No. CR 03-109-(02)-S-BLW

RULE 11 PLEA AGREEMENT

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules
3 of Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree
4 that the defendant will plead guilty to Counts One, Two, Six, Seven, and Eight of the
5 Superseding Indictment. More specifically, the parties agree as follows:

6 Count One charges the defendant with Conspiracy to Possess With Intent to Distribute
7 and Distribute Heroin and Methamphetamine, in violation of Title 21, United States Code,
8 Section 846.

9 Count Two charges the defendant with Distribution of Heroin, in violation of Title 21,
10 United States Code, Section 841(a)(1).

11 Count Six charges the defendant with Distribution of Methamphetamine, in violation of
12 Title 21, United States Code, 841(a)(1).

13 Count Seven charges the defendant with Distribution of Heroin, in violation of Title 21,
14 United States Code, 841(a)(1).

15 Count Eight charges the defendant with Distribution of Methamphetamine, in violation
16 of Title 21, United States Code, 841(a)(1).

17 Upon acceptance of the defendant's guilty plea(s), and the defendant's full compliance
18 with the other terms of this Agreement, including the terms of cooperation set forth below, the
19 Government agrees to recommend a sentence within the Guidelines range and agrees that it will
20 dismiss Counts Three, Four, Five, Nine, Ten, Eleven, Twelve, Fifteen, Sixteen, Seventeen,
21 Eighteen, Nineteen and Twenty of the Superseding Indictment. Defendant acknowledges,
22 agrees and waives objection to the fact that the Court may consider "relevant conduct" alleged
23 in these dismissed counts in arriving at an appropriate sentence pursuant to Section 1B1.3 of the
24 Sentencing Guidelines.

25
26 _____
27 ¹The word "Government" in this Agreement refers to the United States Attorney for the District
28 of Idaho.

1 **B. Elements of the Crime.**

2 1. **Conspiracy.** The defendant is charged in Count One of the Superseding
3 Indictment with conspiring to possess with intent to distribute and distribute methamphetamine
4 and heroin, in violation of Title 21, United States Code, Section 846. The elements of the crime
5 of possessing with intent to distribute and distributing methamphetamine and heroin are as
6 follows:

7 First, beginning on or about October, 2001, and continuing to on or about
8 June 13, 2003, there was an agreement between two or more persons to commit at least one
9 crime as charged in the Superseding Indictment; and

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

12 2. **Distribution of Controlled Substances.** The defendant is charged in
13 Counts Two and Seven with distribution of heroin; the defendant is charged in Counts Six and
14 Eight with distribution of methamphetamine. The elements of the crime of distribution of
15 heroin and/or methamphetamine are as follows:

16 First, the defendant knowingly delivered heroin and/or methamphetamine; and

17 Second, the defendant knew that methamphetamine and heroin were controlled
18 substances or some other prohibited drug.

19 **C. Factual Basis.** If this matter were to proceed to trial, the Government and the
20 defendant agree that the following facts would be proven beyond a reasonable doubt, which
21 facts accurately represent the defendant's readily provable offense conduct. This factual
22 summary is not intended to detail all relevant conduct, or cover all specific offense
23 characteristics, which will be determined by the Court after its consideration of the Presentence
24 Report. Count One: From the dates of October 2001, to on or about June 13, 2003, the
25 defendant, along with his co-defendants, agreed and conspired to sell heroin and
26 methamphetamine along with his co-defendants and others, in and around southwest Idaho.
27 From a base of operations and using cellular telephones, the defendants would receive orders
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1 from consumers of controlled substances. Usually, two defendants would then deliver the
2 controlled substances as ordered and receive payments. The defendants would take orders and
3 sell until they ran out of product. The defendants would return to the base of operations to
4 resupply and deliver proceeds. Count Two: Undercover agents called and ordered from
5 unidentified co-conspirators. On March 11, 2002, an undercover agent purchased .54 grams of
6 black tar heroin from the defendant, who was in the company of a second unidentified male, at
7 an apartment in Meridian, Idaho. Count Six: On May 23, 2002, undercover officers called the
8 defendant to order a quantity of methamphetamine and heroin. The officer purchased 2.3 grams
9 of black tar heroin, contained in 30 separate balloons, for \$400 from the defendant at the same
10 Meridian apartment. At the same time and place, the officer also purchased 26.3 grams of a
11 mixture containing 4.7 grams of pure methamphetamine from the defendant and an unindicted
12 co-conspirator. Counts Seven and Eight: On June 17, 2002, the undercover officer called the
13 defendant to order a quantity of methamphetamine and heroin. That same day, at the same
14 Meridian apartment as previous buys, the undercover officer purchased from the defendant and
15 a male juvenile co-conspirator approximately 1.2 grams of black tar heroin packaged in 15
16 separate balloons for \$200.00, and approximately 53.4 grams of a mixture containing 9.0 grams
17 of pure methamphetamine, contained in two separate packages for \$1,100.00. All of the sales
18 were recorded on video and audio.

19 II. SENTENCING FACTORS

20 A. Maximum and Minimum Penalties. Conspiracy to possess with intent to
21 distribute and distribute methamphetamine and/or heroin, in violation of Title 21, United States
22 Code, Section 846, as charged in Count One, is punishable by a mandatory minimum term of
23 imprisonment of five (5) years and a maximum term of imprisonment of forty (40) years, a
24 maximum fine of \$2,000,000, a term of supervised release of at least four (4) years, and a
25 special assessment of \$100.00. Distribution of heroin, in violation of Title 21, United States
26 Code, Section 841(a)(1), as charged in Counts Two and Seven, is punishable by a maximum
27 term of imprisonment of twenty (20) years, a maximum fine of \$1,000,000, a term of supervised
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1 release of a least three (3) years, and a special assessment of \$100.00 for each count.
2 Distribution of methamphetamine, in violation of Title 21, United States Code, Section
3 841(a)(1), as charged in Counts Six and Eight, is punishable by a mandatory minimum term of
4 imprisonment of five (5) years and a maximum term of imprisonment of forty (40) years, a
5 maximum fine of \$2,000,000, a term of supervised release of a least four (4) years, and a special
6 assessment of \$100.00 for each count.

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

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

18 **C. No Right to Withdraw Plea.** The defendant understands that the Court is not
19 bound to follow any recommendations or requests made by the parties. Furthermore, the
20 defendant understands that if the Court refuses to follow such recommendations or requests, the
21 defendant will not be given the opportunity to withdraw his plea of guilty, under Rule 11(e)(2)
22 of the Federal Rules of Criminal Procedure.

23 **D. Recommendations and Requests.** Pursuant to Rule 11(c)(1)(b) of the Federal
24 Rules of Criminal Procedure, the Government agrees to recommend a sentence within the
25 Guidelines range.

26 1. **Acceptance of Responsibility.** Unless the Government learns of new
27 information to the contrary, defendant will be entitled to a reduction of two levels in the
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1 combined adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the
2 defendant accepts responsibility for the offense by truthfully admitting the defendant's
3 participation in the offense. The Government will move for an additional one-level reduction in
4 the combined offense level, under section 3E1.1(b), if the following conditions are met: the
5 defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or greater; and
6 the defendant has assisted authorities in the investigation or prosecution of his own misconduct
7 by taking one or more of the following steps: (1) timely providing complete information to the
8 government concerning his own involvement in the offense; or (2) timely notifying authorities
9 of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing
10 for trial and permitting the Court to allocate its resources efficiently.

11 If, at any time prior to imposition of sentence, the defendant fails to meet the criteria set
12 out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner inconsistent with
13 acceptance of responsibility, the Government will not make such a recommendation and/or
14 motion or, if one has already been made, it will withdraw the recommendation and/or motion.
15 The criteria and acts which are inconsistent with acceptance of responsibility include: (1)
16 failure to admit a complete factual basis for the plea at the time it is entered, or (2) denial of
17 involvement in the offense, giving conflicting statements about that involvement, or being
18 untruthful with the Court or Probation Officer, or (3) failure to appear in Court, or (4) engaging
19 in any additional criminal conduct prior to sentencing, or (5) attempting to withdraw the plea(s).

20 **2. Downward Departure Request by Defendant.** The defendant will not
21 seek a downward departure without first notifying the Government of defendant's intent to seek
22 a downward departure and his reasons and basis therefor, twenty-one (21) days before
23 sentencing.

24 **E. Fines, Costs, and Restitution.** Unless the Court determines that the defendant
25 will not reasonably be able to pay a fine, or that paying a fine will unduly burden any of the
26 defendant's dependents, a fine shall be imposed. There is no agreement as to the amount of the
27 fine. The Court may also order the defendant to pay the costs of imprisonment, probation, and
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1 supervised release. In addition to imposing a fine, the Court, pursuant to Title 18, United States
2 Code, Sections 3563(b)(3), 3583, and 3663-64, and Section 5E1.1 of the Sentencing Guidelines,
3 may order defendant to pay restitution in an amount equal to the loss caused to any victim(s) of
4 the offense(s) charged in the Superseding Indictment.

5 **F. Special Assessment.** Defendant will pay a special assessment of \$100.00 per
6 count, in addition to any fine imposed. This assessment will be paid by defendant before
7 sentence is imposed, and defendant will furnish a receipt at sentencing. Payment is to be made
8 to the United States District Court, Clerk's Office, Federal Building and United States
9 Courthouse, 550 W. Fort Street, Fourth Floor, Boise, ID 83724.

10 **G. Supervised Release.** Defendant will be sentenced to a term of supervised
11 release, to be served after incarceration, of at least four (4) years on Counts One, Six and Eight,
12 and at least three years on Counts Two and Seven.

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

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

1 **III. WAIVER OF APPEAL RIGHTS**

2 The defendant is aware that Title 18, United States Code, Section 3742 affords
3 defendant the right to appeal the sentence imposed in this case. Acknowledging this, in
4 exchange for the other terms of this Agreement, the defendant knowingly and voluntarily gives
5 up (waives) all appeal rights defendant may have regarding both defendant's conviction and
6 sentence, including any restitution or forfeiture order, or to appeal the manner in which the
7 sentence was imposed, unless the sentence exceeds the maximum permitted by statute, or is the
8 result of an incorrect application of the sentencing guidelines to which the defendant filed a
9 proper and timely 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
12 to Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other
13 terms of this Agreement, the defendant knowingly and voluntarily gives up (waives)
14 defendant's right to contest defendant's pleas, conviction, or sentence in any post-conviction
15 proceeding, including any proceeding authorized by Title 28, United States Code, Section 2255,
16 except as to an appeal claiming ineffective assistance of counsel based upon facts discovered
17 after the entry of defendant's guilty pleas.

18 If the defendant knowingly violates any of the terms of this agreement, any guilty
19 plea(s) by the defendant, and any judgment and/or sentence based thereon, shall remain in full
20 force and effect and will not be the subject of any legal challenge by the defendant on appeal or
21 collateral attack.

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

25 **IV. CONSEQUENCES OF VIOLATING AGREEMENT**

26 **A. Government's Options.** If defendant fails to keep any promise in this
27 Agreement, including any promise to cooperate, or commits a new crime, the Government is
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1 relieved of any obligation not to prosecute defendant on other charges, including any charges
2 dismissed as part of this Plea Agreement. Such charges may be brought without prior notice.
3 In addition, if the Government determines after sentence is imposed under this Agreement that
4 defendant's breach of the Agreement warrants further prosecution, the Government will have
5 the choice between letting the conviction(s) under this Plea Agreement stand or vacating such
6 conviction(s) so that such charge(s) may be re-prosecuted as well. If the Government makes its
7 determination before sentencing, it may withdraw from the Plea Agreement in its entirety.

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

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

23 Furthermore, the defendant understands that by entering a plea of guilty, if that plea is
24 accepted by the Court, there will be no trial and defendant will have waived (given up)
25 defendant's right to a trial as well as the following rights associated with a trial: that a
26 defendant has a right to plead not guilty to the offense(s) charged against the defendant and to
27 persist in that plea; that a defendant has the right to a trial by jury; that at trial the defendant
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1 would be presumed innocent and the government would have to prove guilt beyond a
2 reasonable doubt; and that the defendant would have the right to assistance of counsel for this
3 defense; the right to see and hear all the witnesses and have them cross-examined in defendant's
4 defense, the right to decline to testify unless defendant voluntarily elected to do so in the
5 defendant's own defense, and the right to the issuance of subpoenas or compulsory process to
6 compel the attendance of witnesses to testify in the defendant's defense, or if the defendant
7 decided not to testify or put on any evidence, that these facts would not be held against the
8 defendant.

9 The defendant understands that by pleading guilty he waives (gives up) all of the rights
10 set forth above. The defendant understands that if the defendant enters a plea of guilty, no trial
11 will, in fact, occur and that the only thing remaining to be done in this case is the sentencing
12 hearing, at which only matters concerning the nature of the sentence to be imposed by the Court
13 are to be heard and decided by the Court.

14 **V. COOPERATION**

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

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

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

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

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

5 **C. Substantial Assistance Determination.** Upon the Government's determination
6 that defendant's cooperation amounts to "substantial assistance" in the investigation of others,
7 the Government will request that the Court depart downward from the applicable sentencing
8 range, pursuant to Section 5K1.1 of the Sentencing Guidelines and/or any mandatory minimum
9 sentence pursuant Title 18, United States Code, Section 3553(e). The Government reserves the
10 right to make the sole determination as to whether and when defendant has provided substantial
11 assistance for purposes of the Government's motion for a downward departure.

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

21 **D. Downward Departure.** The parties agree that if the Government makes such a
22 motion at or before the time of sentencing, the Government will recommend that instead of the
23 sentence agreed to in paragraph II.D., the sentence should be up to four levels less than the
24 guidelines range the Court finds to be applicable. If the motion is made after sentencing
25 (pursuant to Rule 35, Federal Rules of Criminal Procedure), the Government will recommend
26 the same departure as stated above. The Court's failure to follow such a recommendation, if
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1 made, is not a valid basis for defendant to withdraw the guilty plea or to rescind the Plea
2 Agreement.

3 **E. Defendant's Assumption of Risk.** The defendant agrees that his cooperation is
4 given freely and voluntarily, with a knowledge of the possible consequences of cooperation
5 with the Government. The defendant agrees that his involvement in this case has been made
6 known to his attorney and that he has permission from his attorney to enter into such an
7 agreement. The defendant hereby absolves the Government, any of its political subdivisions
8 and any of its employees from any liability associated with this cooperation, and includes his
9 successors, heirs and assigns.

10 **VI. MISCELLANEOUS**

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

19 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned
20 on acceptance of this plea Agreement no later than 5:00 p.m. on September 8, 2003. It is
21 defendant's sole and complete responsibility to notify the U.S. Attorney's Office of the
22 acceptance of this Agreement by the date specified above in order for this offer to be effectively
23 accepted.

1 **VII. UNITED STATES' APPROVAL**

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

5 THOMAS E. MOSS
6 UNITED STATES ATTORNEY

7 By:

8 
9
10 **RAFAEL M. GONZALEZ, JR.**
Assistant United States Attorney

9-26-03
DATE

11 **VIII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

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

9-26-03
DATE

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I have read this Plea Agreement and have discussed the contents of the agreement 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 above.


JOHN MEIENHOFER
Attorney for the Defendant

9-26-03
DATE

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