

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILLIP BARRY ALBERT,

Defendant.

23-CR-034-GKF
Case No. ~~XXXXXX~~

Plea Agreement

The United States of America, by and through Clinton J. Johnson, United States Attorney for the Northern District of Oklahoma, Richard Cella and Thomas Duncombe, Assistant United States Attorneys; and the defendant, Phillip Barry Albert, in person and through counsel, Paul DeMuro, in accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure respectfully inform the Court that they have reached the following plea agreement.

1. Plea

The defendant agrees to enter a voluntary plea of guilty to the following:

26 U.S.C. § 7201 – Tax Evasion,

as set forth in the Information in the instant case, Northern District of Oklahoma, and admits to being in fact guilty as charged in the count to which the defendant is pleading guilty.

2. Waiver of Constitutional Rights

The defendant understands that, by pleading guilty, the following constitutional rights will be relinquished:

- a. the right to be indicted if proceeding by Information;
- b. the right to plead not guilty;
- c. the right to be tried by a jury, or, if the defendant wishes and with the consent of the Government, to be tried by a judge;
- d. at trial, the defendant has the right to an attorney, and if defendant could not afford an attorney, the Court would appoint one to represent the defendant;
- e. the defendant has the right to assist in the selection of the jury;
- f. during trial, the defendant would be presumed innocent, and a jury would be instructed that the Government has the burden to prove the defendant guilty beyond a reasonable doubt and by a unanimous verdict;
- g. the defendant has the right to confront and cross-examine witnesses against the defendant;
- h. if desired, the defendant could testify on the defendant's own behalf and present witnesses in the defendant's defense;
- i. if the defendant did not wish to testify, that fact could not be used against the defendant, and a jury would be so instructed;
- j. if the defendant were found guilty after a trial, the defendant would have the right to appeal that verdict to determine if any errors had been committed during trial that would require either a new trial or a dismissal of the charges;
- k. at trial, the defendant would be entitled to have a jury determine beyond a reasonable doubt any facts which may have the effect of increasing the defendant's mandatory minimum or maximum sentence; and
- l. any rights and defenses defendant may have under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution to the forfeiture

of property in this proceeding or any related civil proceeding, special or other assessment, and any order of restitution.

By pleading guilty, the defendant will be giving up all of these rights. By pleading guilty, the defendant understands that the defendant may have to answer questions posed to defendant by the Court, both about the rights that the defendant will be giving up and the factual basis for the defendant's plea.

3. Appellate and Post-Conviction Waiver

In consideration of the promises and concessions made by the United States in this plea agreement, the defendant knowingly and voluntarily agrees to the following terms:

a. The defendant waives the right to directly appeal the conviction and sentence pursuant to 28 U.S.C. § 1291 and/or 18 U.S.C. § 3742(a); except that the defendant reserves the right to appeal from a sentence that exceeds the statutory maximum and reserves the right to appeal issues that are contested at sentencing, including issues raised in defendant's motions for a sentencing departure or variance, if filed;

b. The defendant expressly acknowledges and agrees that the United States reserves all rights to appeal the defendant's sentence as set forth in 18 U.S.C. § 3742(b), and *United States v. Booker*, 543 U.S. 220 (2005); and

c. The defendant waives the right to collaterally attack the conviction and sentence pursuant to 28 U.S.C. § 2255, including any assessment, forfeiture, restitution order, the length of term of supervised release and any condition of supervised release, except for claims of ineffective assistance of counsel.

The defendant expressly acknowledges that counsel has explained his appellate and post-conviction rights; that the defendant understands his rights; and that the defendant knowingly and voluntarily waives those rights as set forth above.



PHILLIP BARRY ALBERT

4. Freedom of Information Act Waiver

The defendant waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

5. Rule 11 Rights Waiver

The defendant knowingly and expressly waives all of the rights afforded defendant pursuant to the provisions of Rule 11(f) of the Federal Rules of Criminal Procedure. In other words, after entry of a plea made pursuant to this plea agreement, and in consideration thereof, the following shall be admissible against the defendant:

- a. A plea of guilty which is later withdrawn or which the defendant seeks to withdraw;
- b. Any statement made in the course of any proceeding under Rule 11 regarding said plea of guilty; and

c. Any statement made in the course of plea discussions with an attorney or agent for the Government, or which were made pursuant to a proffer letter agreement, which result in a plea of guilty later withdrawn.

6. Waiver of Right to Jury Trial on Sentencing Factors

The defendant, by entering this plea, also waives the right to have facts that determine the offense level under the Sentencing Guidelines (including facts that support any specific offense characteristic or other enhancement or adjustment) (1) charged in the Information, (2) proven to a jury, or (3) proven beyond a reasonable doubt. The defendant explicitly consents to have the sentence based on facts to be established by a preponderance of the evidence before the sentencing judge pursuant to *United States v. Crockett*, 435 F.3d 1305 (10th Cir. 2006), and *United States v. Magallanez*, 408 F.3d 672 (10th Cir. 2005), and to allow the Court to consider any reliable evidence without regard to its admissibility at trial. The defendant explicitly acknowledges that his plea to the charged offense authorizes the Court to impose any sentence up to and including the maximum sentence set forth in the United States Code. The defendant also waives all challenges to the constitutionality of the Sentencing Guidelines.

7. Payment of Monetary Penalties

The defendant understands that the Court may impose a fine pursuant to the Sentencing Guidelines. The defendant agrees, as a part of this agreement, to submit to interviews by the United States Attorney's Financial Litigation Unit regarding the defendant's financial status, and to complete and submit a financial statement, under

oath, not later than two weeks after the date of this plea agreement. The defendant understands that, by law, interest accrues on any remaining balance of the debt.

The defendant understands that monetary penalties imposed by the Court will be (i) subject to immediate enforcement as provided for in 18 U.S.C. Section 3613, and (ii) submitted to the Treasury Offset Program so that any federal payment or transfer of returned property the defendant receives may be offset and applied to federal debts but will not affect the periodic payment schedule.

8. Restitution for Offense of Conviction

Defendant agrees to pay restitution to the Internal Revenue Service in the total amount of \$1,000,232, pursuant to 18 U.S.C. § 3663(a)(3), which the parties stipulate reflects the total tax loss to the United States Treasury. Defendant agrees that the total amount of restitution reflected in this agreement results from Defendant's offense of conviction. The total amount of restitution consists of the following:

Tax Year	Amount to Be Credited to Tax
2014	\$167,231
2015	\$253,814
2016	\$261,889
2017	\$189,301
2018	\$93,742
2019	\$34,255

	Total: \$1,000,232
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Defendant agrees to pay Title 26 interest on the restitution amount; interest runs from the last date prescribed for payment of the relevant tax through the date of sentencing. The government will provide an updated interest figure at sentencing.

Defendant agrees that restitution is due and payable immediately after the judgment is entered and is subject to immediate enforcement, in full, by the United States. If the Court imposes a schedule of payments, Defendant agrees that the schedule of payments is a schedule of the minimum payment due, and that the payment schedule does not prohibit or limit the methods by which the United States may immediately enforce the judgment in full. The IRS will use the amount of restitution ordered as the basis for a civil assessment under 26 U.S.C. § 6201(a)(4). Defendant does not have the right to challenge the amount of this restitution-based assessment. See 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor Defendant's timely payment of restitution according to that schedule will preclude the IRS from immediately collecting the full amount of the restitution-based assessment.

Defendant is entitled to receive credit for restitution paid pursuant to this plea agreement against those assessed civil tax liabilities due and owing for the same periods for which restitution was ordered. Defendant understands and agrees that the plea agreement does not resolve the Defendant's civil tax liabilities, that the IRS may

seek additional taxes, interest and penalties from Defendant relating to the conduct covered by this plea agreement and for conduct relating to another time period, and that satisfaction of the restitution debt does not settle, satisfy, or compromise Defendant's obligation to pay any remaining civil tax liability. Defendant authorizes release of information to the IRS for purposes of making the civil tax and restitution-based assessments.

Defendant understands that he is not entitled to credit with the IRS for any payment until the payment is received by the IRS.

If full payment cannot be made immediately, Defendant agrees to make a complete and accurate financial disclosure to the IRS on forms prescribed by the IRS (including, but not limited to, IRS Form 433-A and Form 433-B, as appropriate), and to disclose to the IRS any and all additional financial information and financial statements provided to the probation office. Defendant also agrees to provide the above-described information to the probation office.

If Defendant makes a payment of the above restitution prior to sentencing, the payment will be applied as a credit against the restitution ordered.

Defendant agrees to send all payments made pursuant to the court's restitution order to the Clerk of the Court at the following address:

United States District Court
Northern District of Oklahoma
Office of the Clerk of Court
333 W. 4th Street, Room 411
Tulsa, OK 74103

With each payment to the Clerk of the Court made pursuant to the District Court's restitution order, defendant will provide the following information:

- A. Defendant's name and Social Security number;
- B. The District Court and the docket number assigned to this case;
- C. Tax year(s) or period(s) for which restitution has been ordered; and
- D. A statement that the payment is being submitted pursuant to the District Court's restitution order.

Defendant agrees to include a request that the Clerk of the Court send the information, along with Defendant's payments, to the IRS address below:

IRS - RACS
Attn: Mail Stop 6261, Restitution
333 W. Pershing Ave.
Kansas City, MO 64108

Defendant also agrees to send a notice of any payments made pursuant to this agreement, including the information listed in the previous paragraph, to the IRS at the following address:

IRS - RACS
Attn: Mail Stop 6261, Restitution
333 W. Pershing Ave.
Kansas City, MO 64108

9. Restitution for Other Offenses

The defendant agrees the Court's consideration of the amount of restitution shall **NOT** be limited to the amounts alleged in the counts to which the defendant is pleading guilty and may include any stipulated amounts as set forth below pursuant to 18 U.S.C. § 3663(a)(3). Therefore, the defendant also agrees that restitution is due

to the following entity not arising from the offense of conviction but nonetheless related to this plea agreement.

Pelco Industries, Inc.
320 W. 18th St.
Edmond, OK 73013

Not less than: \$2,615,750.00

The defendant understands that the dollar amount listed above is a minimum agreed restitution amount and that this agreement does not limit the Court's ability to order restitution in excess of the minimum agreed amount or to order restitution to additional victims not listed in this agreement.

10. Restitution not Dischargeable in Bankruptcy

The defendant further agrees that any amount ordered by the Court to be paid as restitution may not be discharged, in whole or in part, in any bankruptcy proceeding.

11. Special Assessment

The defendant hereby agrees to pay the total amount required for the Special Monetary Assessment (\$100 per felony count) to the United States District Court Clerk before the time of the sentencing hearing or as directed by the District Court.

12. Factual Basis and Elements

The elements that the United States must prove beyond a reasonable doubt in order to convict under 26 U.S.C. § 7201 are as follows:

- a. The defendant owed substantial income tax in addition to the tax liability which he reported on his 2016 income tax return;
- b. The defendant intended to evade and defeat payment of that additional tax;

- c. The defendant committed an affirmative act in furtherance of this intent, that is he prepared and caused to be prepared, and signed and caused to be signed, a false and fraudulent Form 1040, U.S. Individual Income Tax Return for 2016; and
- d. The defendant acted willfully, that is, with the voluntary intent to violate a known legal duty.

With regard to the factual basis required by Federal Rule of Criminal Procedure 11(b)(3), the defendant agrees and stipulates that there is a factual basis for the plea of guilty and relieves the United States of any further obligation to adduce such evidence.

The defendant, **PHILLIP BARRY ALBERT**, admits knowingly, willfully and intentionally committing or causing to be committed the acts constituting the crime alleged in the Information in the instant case, and confesses to the Court that the defendant is, in fact, guilty of such crime.

I, **PHILLIP BARRY ALBERT**, admit that from about April 2014 to about May 2021, in the Northern District of Oklahoma and elsewhere, I willfully attempted to evade and defeat income tax due and owing by me to the United States of America, for calendar years 2014 through 2019, by signing and causing to be filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, for calendar years 2014 through 2019, in order to reduce my tax liabilities.

During the period in question, I was the President of Pelco Structural, a single-member Oklahoma Limited Liability Company owned by Par 5 Products, Inc., and worked at Pelco Structural's offices in Claremore, Oklahoma, which is in the Northern District of Oklahoma. During that time, at my direction, I had the company's outside payroll service company issue purported "reimbursement" payments to me, via checks, that were structured so that they would neither have federal income taxes withheld nor appear on my Forms

W-2. I did not submit receipts or any documentation to support the alleged "reimbursements," but instead, I would tell the company's Controller, Don Eagleton whatever amount I wanted, including on at least one occasion giving him a scrap piece of paper with the amount. In fact, I knew that the checks did not relate to any legitimate business expense I had made on behalf of Pelco Structural and for which I could have legitimately expected reimbursement.

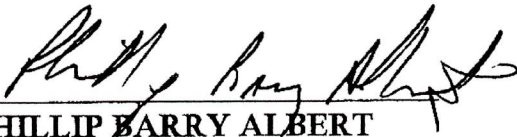
I then deposited the checks into my personal checking account at BancFirst bank in Claremore, Oklahoma.

The Forms 1040 I signed and caused to be filed for calendar years 2014 through 2019 did not report these payments I caused to be paid to me by Pelco Structural as taxable income. The amount of unreported income for each year and resulting additional tax due and owing is as follows:

Tax Year	Unreported Income	Additional Tax Due & Owing
2014	\$410,000	\$167,231
2015	\$662,750	\$253,814
2016	\$665,000	\$261,889
2017	\$488,000	\$189,301
2018	\$270,000	\$93,742
2019	\$120,000	\$34,255
Total	\$2,615,750	\$1,000,232

In May 2021, I signed and caused to be filed Amended U.S. Individual Income Tax Returns, Forms 1040X, for calendar years 2016, 2017, and 2018. None of the amounts reported on the Forms 1040X varied from the original Forms 1040 I signed and caused to be filed, and the narrative explanation provided on my Forms 1040X did not account for the additional taxable income I received and did not report on my original Forms 1040.

I voluntarily and intentionally took these actions knowing that they were illegal and wrong.


PHILLIP BARRY ALBERT
Defendant

1.12.2023
Date

13. Further Prosecution

The United States shall not initiate additional criminal charges against the defendant in the Northern District of Oklahoma that, as of the date of the defendant's acceptance of this agreement, arise from its investigation of the defendant's actions and conduct giving rise to the instant Information, save and except crimes of violence. The defendant understands, however, that this obligation is subject to all "Limitations" set forth below, and that the United States Attorney's Office for the Northern District of Oklahoma is free to prosecute the defendant for any illegal conduct (*i.e.*, violation of federal criminal laws) not discovered by or revealed to the Government during its investigation or occurring after the date of this agreement.

14. Acceptance of Responsibility

Provided the defendant clearly demonstrates acceptance of responsibility, the United States agrees to recommend a two-level reduction in offense level pursuant to U.S.S.G. § 3E1.1. The United States agrees to file a motion recommending that the defendant receive an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b)

if the defendant is otherwise eligible therefor. The sentencing judge is in a unique position to evaluate the acceptance of responsibility, and the Court's determination will provide the final approval or disapproval of any Section 3E1.1 point level reduction for timely acceptance of responsibility.

The obligations of the Government herein, relative to acceptance of responsibility, are contingent upon the defendant's continuing manifestation of acceptance of responsibility as determined by the United States. If the defendant falsely denies, or makes conflicting statements as to, his involvement in the crime to which he is pleading, falsely denies or frivolously contests relevant conduct that the Court determines to be true, willfully obstructs, or attempts to obstruct or impede the administration of justice as defined in U.S.S.G. § 3C1.1, or perpetrates or attempts to perpetrate crimes while awaiting sentencing, or advances false or frivolous issues in mitigation, the United States expressly reserves the right to withdraw any recommendation regarding acceptance of responsibility without breaching the agreement.

15. Sentence

a. Imprisonment

The defendant acknowledges that under 26 U.S.C. § 2701 the maximum statutory sentence is five years of imprisonment and a fine of not more than \$100,000.

b. Supervised Release

Additionally, the defendant is aware that, if imprisonment is imposed, the Court may include as part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment not to exceed three years.

If the term of supervised release for any count of conviction is revoked, the defendant may be imprisoned for an additional term not to exceed the term of imprisonment authorized in 18 U.S.C. § 3583(e)(3) for the offense of conviction, with no credit being given for any time served while on supervised release. Further, the Court may impose another term of supervised release following any term of imprisonment imposed for a violation of supervised release conditions, and this term of supervised release may not exceed the term of supervised release originally authorized by statute for the offense of conviction less any term of imprisonment that was imposed upon revocation of supervised release (18 U.S.C. § 3583(e) and (h)). If a second or subsequent term of supervised release is revoked, the Court may impose another term of imprisonment not to exceed the difference between any imprisonment imposed for a prior revocation of supervised release for the offense of conviction and the term of imprisonment authorized pursuant to 18 U.S.C. § 3583(e)(3). Accordingly, the original term of imprisonment when combined with any term of imprisonment arising from revocations of supervised release, may result in a total amount of imprisonment greater than the statutory maximum term for the offense of conviction.

c. Guidelines

The defendant is aware that the Sentencing Guidelines promulgated pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. § 3551 through § 3742, and 28 U.S.C. § 991 through § 998, are advisory. The district courts, while not bound to apply the Sentencing Guidelines, must consult those Guidelines and take them into account when sentencing. See 18 U.S.C.A. § 3553(a).

The sentence imposed in federal court is without parole. The defendant is further aware that the sentence has not yet been determined by the Court, that any estimate of the likely sentence received from any source is a prediction, not a promise, and that the Court has the final discretion to impose any sentence up to the statutory maximum. The defendant further understands that all recommendations or requests by the United States pursuant to this agreement are not binding upon the Court.

If the sentencing Court should impose any sentence up to the maximum established by statute, the defendant cannot, for that reason alone, withdraw defendant's guilty plea, but will remain bound to fulfill all of defendant's obligations under this agreement.

Nothing in this plea agreement, save and except any stipulations contained herein, limits the right of the United States to present to the Court or Probation Office, either orally or in writing, any and all facts and arguments relevant to the defendant's sentence that are available to the United States at the time of sentencing. The defendant acknowledges hereby that relevant conduct, that is, conduct charged

in any dismissed count and all other uncharged related criminal activities, may be used in the calculation of the sentence. The United States reserves its full opportunity to speak pursuant to Rule 32(i)(4)(A)(iii) of the Federal Rules of Criminal Procedure.

The defendant further understands that the sentence to be imposed upon the defendant will be determined solely by the sentencing judge, and that the sentencing judge is not bound by the following stipulations. The United States cannot and does not make any promise or representation as to what sentence the defendant will receive.

16. Stipulations

The defendant and the United States agree and stipulate to the following facts: Having been fully apprised by defense counsel of defendant's right to seek compensation pursuant to Public Law 105-119, the defendant **WAIVES** any and all such right, and stipulates that defendant is not a "prevailing party" in connection with this case.

In accordance with Rule 11(c)(1)(B), Defendant and the United States stipulate that: (i) the total tax loss for purposes of U.S.S.G. § 2T1.1 and § 2T4.1 is \$1,000,232, and therefore, (ii) the Base Offense Level under the Sentencing Guidelines is 20, which is not subject to any upward adjustments or enhancements under the Sentencing Guidelines, including without limitation any upward adjustment under U.S.S.G. § 3B1.3; (iii) after application of the two point downward adjustment under U.S.S.G. § 3E1.1(a) and, upon the government's motion, the one point

downward adjustment under § 3E1.1(a), as provided by Paragraph 14 herein; (iv) Defendant's Total Offense Level under the Sentencing Guidelines is 17; (v) with an applicable Sentencing Guidelines range of 24 to 30 months.

17. Limitations

This plea agreement shall be binding and enforceable upon the Office of the United States Attorney for the Northern District of Oklahoma, but in no way limits, binds or otherwise affects the rights, powers, duties or obligations of any state or local law enforcement agency, administrative or regulatory authorities, civil or administrative enforcement, collection, bankruptcy, adversary proceedings or suits which have been or may be filed by any governmental entity, including without limitation the Internal Revenue Service, the Tax Division of the Department of Justice, and the trustee in bankruptcy.

18. Breach of Agreement

In the event either party believes the other has failed to fulfill any obligations under this agreement, then the complaining party shall, in its discretion, have the option of petitioning the Court to be relieved of its obligations herein. Whether or not a party has completely fulfilled all of its obligations under this agreement shall be determined by the Court in an appropriate proceeding at which any disclosures and documents provided by either party shall be admissible and at which the complaining party shall be required to establish any breach by a preponderance of the evidence. The defendant hereby **WAIVES** any right under Rule 11(d) and (e) of the Federal

Rules of Criminal Procedure to withdraw from defendant's plea and this agreement, save and except under circumstances where the Court rejects the plea agreement under Rule 11(c)(5) and except for the limited reasons outlined above in this paragraph.

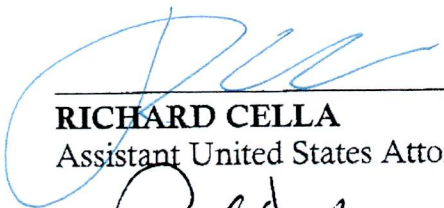
In the event that **PHILLIP BARRY ALBERT**, after entry of a plea of guilty, unsuccessfully attempts to withdraw the defendant's plea of guilty, the United States may continue to enforce the agreement but will no longer be bound by any particular provision in this agreement. This provision will not have any continued vitality if it is determined by the Court that the United States acted in bad faith to bring about the attempted withdrawal of plea.

19. Conclusion

No agreements, representations or understandings have been made between the parties in this case, other than those which are explicitly set forth in this plea agreement and the Plea Agreement Supplement that the United States will file in this case (as is routinely done in every case, even though there may or may not be any additional terms) and none will be entered into unless executed in writing and signed by all of the parties.

SO AGREED:

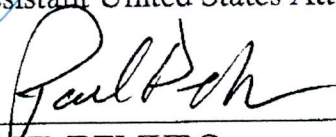
CLINTON J. JOHNSON
UNITED STATES ATTORNEY



RICHARD CELLA
Assistant United States Attorney

2-1-23

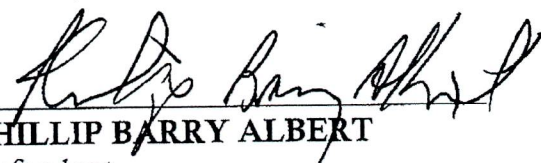
Dated



PAUL DEMURO
Attorney for Defendant

1. 12. 2023

Dated

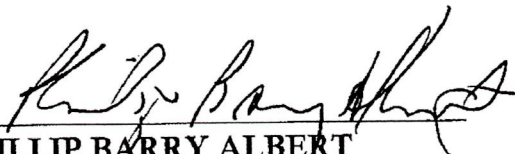


PHILLIP BARRY ALBERT
Defendant

1.12.2023

Dated

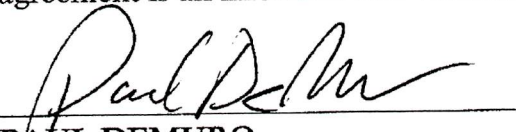
I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to sentencing which may apply to my case. No other promises or inducements have been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



PHILLIP BARRY ALBERT
Defendant

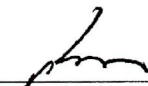
1.12.2023
Dated

I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending Information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.



PAUL DEMURO
Counsel for the Defendant

1.12.2023
Dated



Defendant's Initials