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7 Attorney for Plaintiff
8 UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) CR No. 08-00181-VAP
12)
Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
13) FRANK DARRYL HOLDER
v.)
14)
FRANK DARRYL HOLDER,)
15)
Defendant.)
16)
17)

18 1. This constitutes the plea agreement between Frank Darryl
19 Holder ("defendant"), the United States Attorney's Office for the
20 Central District of California ("the USAO") in the above-
21 captioned case. This agreement is limited to the USAO, and
22 cannot bind any other federal, state or local prosecuting,
23 administrative or regulatory authorities.

24 PLEA

25 2. Defendant agrees to plead guilty to counts one and two
26 of the indictment in United States v. Frank Darryl Holder,
27 CR No. 08-00181-VAP.

28

1 criminal conduct or all facts known to either party that relate
2 to that conduct.

3 On or about October 15, 2008 defendant entered Union Bank of
4 California, located at 601 West Route 66, Glendora within the
5 Central District of California. Defendant walked up to the bank
6 teller C.M., and while holding up a canvas bag, demanded that
7 C.M. give him all her money from the top and bottom cash drawers.
8 C.M. placed money from both cash drawers in the canvas bag.
9 Defendant took the canvas bag and left the bank with
10 approximately \$1,392.00 of the bank's money.

11 On or about October 29, 2008 defendant entered Bank of
12 America, located at 11570 4th Avenue, Rancho Cucamonga, within
13 the Central District of California. Defendant walked up to the
14 bank teller C.J., placed a canvas bag on the counter, and
15 demanded money from the top and bottom cash drawers. C.J. placed
16 money from both cash drawers in the canvas bag. Defendant took
17 the canvas bag and left with approximately \$2,546.00 of the
18 bank's money. Defendant walked along the sidewalk toward his
19 pick-up truck when the dye pack exploded inside his canvas bag.
20 Defendant was stopped and arrested by the San Bernardino
21 Sheriff's Department (SBSD) near the intersection of Whittram and
22 Ilex in Rancho Cucamonga. Approximately \$2,546.00 was recovered
23 from defendant's truck.

24 At the time of the above robberies, Union Bank of California
25 and Bank of America were federally insured by the FDIC. Bank
26 Tellers C.M. and C.J. were all intimidated by defendant and
27 feared for their safety. For that reason, each of the bank
28 tellers complied with defendant's demands for money from their

1 cash drawers.

2 WAIVER OF CONSTITUTIONAL RIGHTS

3 10. By pleading guilty, defendant gives up the following
4 rights:

5 a) The right to persist in a plea of not guilty.

6 b) The right to a speedy and public trial by jury.

7 c) The right to the assistance of legal counsel at
8 trial, including the right to have the Court appoint counsel for
9 defendant for the purpose of representation at trial. (In this
10 regard, defendant understands that, despite his plea of guilty,
11 he retains the right to be represented by counsel -- and, if
12 necessary, to have the court appoint counsel if defendant cannot
13 afford counsel -- at every other stage of the proceeding.)

14 d) The right to be presumed innocent and to have the
15 burden of proof placed on the government to prove defendant
16 guilty beyond a reasonable doubt.

17 e) The right to confront and cross-examine witnesses
18 against defendant.

19 f) The right, if defendant wished, to testify on
20 defendant's own behalf and present evidence in opposition to the
21 charges, including the right to call witnesses and to subpoena
22 those witnesses to testify.

23 g) The right not to be compelled to testify, and, if
24 defendant chose not to testify or present evidence, to have that
25 choice not be used against defendant.

26 By pleading guilty, defendant also gives up any and all
27 rights to pursue any affirmative defenses, Fourth Amendment or
28 Fifth Amendment claims, and other pretrial motions that have been

1 filed or could be filed.

2 SENTENCING FACTORS

3 11. Defendant understands that the Court is required to
4 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
5 including the kinds of sentence and sentencing range established
6 under the United States Sentencing Guidelines ("U.S.S.G." or
7 "Sentencing Guidelines"), in determining defendant's sentence.
8 Defendant further understands that the Sentencing Guidelines are
9 advisory only, and that after considering the Sentencing
10 Guidelines and the other § 3553(a) factors, the Court may be free
11 to exercise its discretion to impose any reasonable sentence up
12 to the maximum set by statute for the crimes of conviction.

13 12. Defendant and the USAO agree and stipulate to the
14 following applicable Sentencing Guidelines factors:

15 Count One:

16 Base Offense Level : 20 U.S.S.G. § 2B3.1(a)

17 Specific Offense
18 Characteristics:

19 Property of financial
20 institution taken : +2 U.S.S.G. § 2B3.1(b)(1)

21 Count One Adjusted
22 Offense Level : 22 (1 unit)

23 Count Two:

24 Base Offense Level : 20 U.S.S.G. § 2B3.1(a)

25 Specific Offense
26 Characteristics:

27 Property of financial
28 institution taken : +2 U.S.S.G. § 2B3.1(b)(1)

1 Count Two Adjusted
Offense Level : 22 (1 unit)

3 Multiple count adjustment
 (Two units) : +2 U.S.S.G. § 3D1.4

4 Defendant and the USAO reserve the right to argue that additional
5 specific offense characteristics, adjustments, and departures
6 under the Sentencing Guidelines are appropriate. Defendant also
7 understands that defendant's base offense level could be
8 increased if defendant is a career offender under U.S.S.G. §§
9 4B1.1 and 4B1.2. In the event that defendant's offense level is
10 so altered, the parties are not bound by the base offense level
11 stipulated to above.

12 13. There is no agreement as to defendant's criminal
13 history or criminal history category.

14 14. Defendant and the USAO, pursuant to the factors set
15 forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and
16 (a)(7), further reserve the right to argue for a sentence outside
17 the sentencing range established by the Sentencing Guidelines.

18 15. The stipulations in this agreement do not bind either
19 the United States Probation Office or the Court. Both defendant,
20 the USAO are free to: (a) supplement the facts by supplying
21 relevant information to the United States Probation Office and
22 the Court, and (b) correct any and all factual misstatements
23 relating to the calculation of the sentence.

24 DEFENDANT'S OBLIGATIONS

25 16. Defendant agrees that he will:

- 26 a) Plead guilty as set forth in this agreement.
27 b) Not knowingly and willfully fail to abide by all
28

1 sentencing stipulations contained in this agreement.

2 c) Not knowingly and willfully fail to: (i) appear for
3 all court appearances, (ii) surrender as ordered for service of
4 sentence, (iii) obey all conditions of any bond, and (iv) obey
5 any other ongoing court order in this matter.

6 d) Not commit any crime; however, offenses which would
7 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
8 not within the scope of this agreement.

9 e) Not knowingly and willfully fail to be truthful at
10 all times with Pretrial Services, the U.S. Probation Office, and
11 the Court.

12 f) Pay the applicable special assessment at or before
13 the time of sentencing unless defendant lacks the ability to pay
14 and submits a completed financial statement (form OBD-500) to the
15 USAO prior to sentencing.

16 THE USAO'S OBLIGATIONS

17 17. If defendant complies fully with all defendant's
18 obligations under this agreement, the USAO agrees:

19 a) To abide by all sentencing stipulations contained in
20 this agreement.

21 b) Except for criminal tax violations (including
22 conspiracy to commit such violations chargeable under 18 U.S.C.
23 § 371), not to further prosecute defendant for violations of 18
24 U.S.C. § 2113 arising out of defendant's conduct described in the
25 stipulated factual basis set forth in paragraph 9 above.

26 Defendant understands that the USAO is free to prosecute
27 defendant for any other unlawful past conduct or any unlawful
28 conduct that occurs after the date of this agreement. Defendant

1 execution, and the Court finds such a breach to have occurred,
2 then: (a) if defendant has previously entered a guilty plea,
3 defendant will not be able to withdraw the guilty plea, and (b)
4 the USAO will be relieved of all of their obligations under this
5 agreement.

6 19. Following the Court's finding of a knowing and willful
7 breach of this agreement by defendant, should the USAO elect to
8 pursue any charge that was either dismissed or not filed as a
9 result of this agreement, then:

10 a) Defendant agrees that any applicable statute of
11 limitations is tolled between the date of defendant's signing of
12 this agreement and the commencement of any such prosecution or
13 action.

14 b) Defendant gives up all defenses based on the statute
15 of limitations, any claim of pre-indictment delay, or any speedy
16 trial claim with respect to any such prosecution or action,
17 except to the extent that such defenses existed as of the date of
18 defendant's signing this agreement.

19 c) Defendant agrees that: (i) any statements made by
20 defendant, under oath, at the guilty plea hearing (if such a
21 hearing occurred prior to the breach); (ii) the stipulated
22 factual basis statement in this agreement; and (iii) any evidence
23 derived from such statements, are admissible against defendant in
24 any such prosecution of or action against defendant, and
25 defendant shall assert no claim under the United States
26 Constitution, any statute, Rule 410 of the Federal Rules of
27 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure,
28 or any other federal rule, that the statements or any evidence

1 derived from any statements should be suppressed or are
2 inadmissible.

3 LIMITED MUTUAL WAIVER OF APPEAL

4 20. Defendant gives up the right to appeal any sentence
5 imposed by the Court, including any order of restitution, and the
6 manner in which the sentence is determined, provided that (a) the
7 sentence is within the statutory maximum specified above and is
8 constitutional, and (b) the Court imposes a sentence within or
9 below the range corresponding to a total offense level of 21.
10 Notwithstanding the foregoing, defendant retains any ability
11 defendant has to appeal the conditions of supervised release
12 imposed by the Court, with the exception of the following:
13 conditions set forth in General Orders 318, 01-05, and/or 05-02
14 of this Court; the drug testing conditions mandated by 18 U.S.C.
15 §§ 3563(a) (5) and 3583(d); and the alcohol and drug use
16 conditions authorized by 18 U.S.C. § 3563(b) (7).

17 21. The USAO gives up its right to appeal the sentence,
18 provided that (a) the sentence is within the statutory maximum
19 specified above and is constitutional, and (b) the Court imposes
20 a sentence within or above the range corresponding to a total
21 offense level of 21, and the applicable criminal history category
22 as determined by the Court.

23 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

24 22. Defendant agrees that if any count of conviction is
25 vacated, reversed, or set aside, the USAO may: (a) ask the Court
26 to resentence defendant on any remaining count of conviction,
27 with the USAO and defendant being released from any stipulations
28 regarding sentencing contained in this agreement, (b) ask the

1 Court to void the entire plea agreement and vacate defendant's
2 guilty plea on any remaining count of conviction, with the USAO,
3 and defendant being released from all of their obligations under
4 this agreement, or (c) leave defendant's remaining conviction,
5 sentence, and plea agreement intact. Defendant agrees that the
6 choice among these three options rests in the exclusive
7 discretion of the USAO.

8 COURT NOT A PARTY

9 23. The Court is not a party to this agreement and need not
10 accept any of the USAO's sentencing recommendations or the
11 parties' stipulations. Even if the Court ignores any sentencing
12 recommendation, finds facts or reaches conclusions different from
13 any stipulation, and/or imposes any sentence up to the maximum
14 established by statute, defendant cannot, for that reason,
15 withdraw defendant's guilty plea, and defendant will remain bound
16 to fulfill all defendant's obligations under this agreement. No
17 one -- not the prosecutor, defendant's attorney, or the Court --
18 can make a binding prediction or promise regarding the sentence
19 defendant will receive, except that it will be within the
20 statutory maximum.

21 NO ADDITIONAL AGREEMENTS

22 24. Except as set forth herein, there are no promises,
23 understandings or agreements between the USAO and defendant or
24 defendant's counsel. Nor may any additional agreement,
25 understanding or condition be entered into unless in a writing
26 signed by all parties or on the record in court.

27 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

28 25. The parties agree and stipulate that this Agreement

1 will be considered part of the record of defendant's guilty plea
2 hearing as if the entire Agreement had been read into the record
3 of the proceeding.

4 This agreement is effective upon signature by defendant and
5 an Assistant United States Attorney.

6 AGREED AND ACCEPTED

7 UNITED STATES ATTORNEY'S OFFICE
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 THOMAS P. O'BRIEN
10 United States Attorney

11 _____
12 PRIYA SOPORI
Assistant United States Attorney

_____ Date

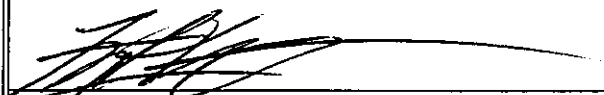
13 I have read this agreement and carefully discussed every
14 part of it with my attorney. I understand the terms of this
15 agreement, and I voluntarily agree to those terms. My attorney
16 has advised me of my rights, of possible defenses, of the
17 sentencing factors set forth in 18 U.S.C. § 3553(a), of the
18 relevant Sentencing Guidelines provisions, and of the
19 consequences of entering into this agreement. No promises or
20 inducements have been given to me other than those contained in
21 this agreement. No one has threatened or forced me in any way to
22 enter into this agreement. Finally, I am satisfied with the
23 representation of my attorney in this matter.

24 
25 _____
FRANK DARRYL HOLDER
26 Defendant

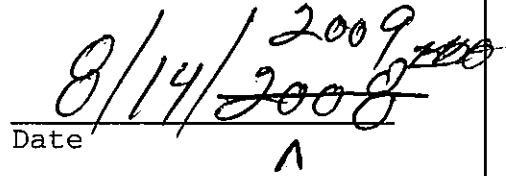
_____ Date
8-14-09

27 I am Frank Darryl Holder's attorney. I have carefully
28 discussed every part of this agreement with my client. Further,

1 I have fully advised my client of his rights, of possible
2 defenses, of the sentencing factors set forth in 18 U.S.C.
3 § 3553(a), of the relevant Sentencing Guidelines provisions, and
4 of the consequences of entering into this agreement. To my
5 knowledge, my client's decision to enter into this agreement is
6 an informed and voluntary one.

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8 KAY OTANI
9 Counsel for Defendant
10 Frank Darryl Holder

11 
Date

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