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Chief Approval 

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:26-cr-251-SPC-NPM

MARK FRISBIE

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Sara C. Sweeney, Attorney for the United States, Acting under Authority Conferred by 28 U.S.C § 515, and the defendant, Mark Frisbie, and the attorneys for the defendant, Simon A. Gaugush and Tino M. Lisella, mutually agree as follows:

A. Particularized Terms

1. Count Pleading To

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the defendant with making a false statement in a federal crop-insurance claim, in violation of 18 U.S.C. § 1014.

2. Maximum Penalties

Count One carries a maximum sentence of 30 years' imprisonment, a maximum fine of \$1,000,000, or twice the gross gain or loss caused by the offense, (whichever is greater), a term of supervised release of not

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more than 5 years, and a mandatory special assessment of \$100. With respect to the charged offense, the Court shall order the defendant to make full restitution to any victim of the offense, and the defendant agrees to otherwise make restitution to the victim(s) of other offense(s), as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which he has been charged and to which he is pleading guilty. The elements of Count One are:

1. The defendant made a false statement or report;
2. The defendant made the false statement or report knowing that it was false; and
3. The defendant made the statement or report for the purpose of influencing in any way the action of the Federal Crop Insurance Corporation or a company reinsured by the Federal Crop Insurance Corporation.

4. Indictment Waiver

The defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge the

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defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement related to the defendant's association with Coconspirators 1 and 2.

6. Restitution

Pursuant to 18 U.S.C. § 3663A, the defendant agrees to make restitution to the Federal Crop Insurance Corporation and the Farm Service Agency. The defendant agrees to pay \$1,748,408 in restitution to the Federal Crop Insurance Corporation and \$1,506,992.26 in restitution to the Farm Service Agency.

7. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG § 3E1.1(b) and all terms of this Plea

Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG § 3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney's Office for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

8. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

9. Cooperation - Substantial Assistance to be Considered

The defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a

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prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney's Office for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney's Office for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or

what type of motion related thereto will be filed, if any, rests solely with the United States Attorney's Office for the Middle District of Florida, and the defendant agrees that he cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

10. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant, or the defendant's nominees.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial, or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory, and procedural challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

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If the United States seeks the forfeiture of specific assets pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture and to transfer custody of such property to the United States before the defendant's sentencing. To that end, the defendant agrees to make a full and complete disclosure of all assets over which he exercises control directly or indirectly, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years. The defendant further agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and USSG § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of the defendant's cooperation.

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The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon the defendant's heirs, successors and

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assigns until the agreed forfeiture, including any agreed forfeiture amount, is collected in full.

B. Standard Terms and Conditions

1. Restitution, Special Assessment, and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (28 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this

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obligation is satisfied, the Defendant agrees to deliver a cashier's check, certified check or money order to the Clerk of the Court in the amount of \$100.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which he is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if he should violate the conditions of release, he would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant

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factual information, including the totality of the defendant's criminal activities, if any, not limited to the count to which the defendant pleads, to respond to comments made by the defendant or the defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate, and truthful and will include all assets in which he has any interest or over which he exercises control, directly or indirectly, including those held by a spouse, dependent, nominee, or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office

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to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records, and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. The defendant further understands and acknowledges that any discussions between the defendant or the defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any

recommendations be rejected, the defendant will not be permitted to withdraw his plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal his sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the United States Attorney's Office for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring the defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and the defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty and the elements thereof, including the penalties provided by law, and his complete satisfaction with the representation and advice received from his undersigned counsel. The

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defendant also understands that he has the right to plead not guilty, and that he has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in his defense; but, by pleading guilty, the defendant waives or gives up those rights and there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel, the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement. The defendant also understands that he will be adjudicated guilty of the offenses to which he has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

The defendant is pleading guilty because he is in fact guilty. The defendant certifies that he does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

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Mark Frisbie and the Federal Crop Insurance Program

At times relevant to the charged offense, defendant Mark Frisbie was a farmer and agricultural-chemical salesman in or around Immokalee, Florida.

Frisbie farmed pursuant to a growing partnership with Coconspirator 1. Under their growing partnership, Coconspirator 1 paid for Frisbie's farming expenses, and Frisbie managed a farm for the partnership. Coconspirator 1 (and Coconspirator 1's businesses) marketed all crops that were harvested on the partnership's farm. Coconspirator 1 and Frisbie split profits and losses from the partnership's farm 60% (Coconspirator 1) to 40% (Frisbie).

During the Frisbie-Coconspirator 1 partnership, Frisbie frequently dealt with Coconspirator 2. Frisbie knew Coconspirator 2 to work for, and report directly to, Coconspirator 1.

Frisbie insured some crops that the partnership was growing under the Federal Crop Insurance Program. The Federal Crop Insurance Program was a government program designed to insure American farmers against the risk of producing a crop. The program allowed farmers to purchase a (government-subsidized) insurance policy, and—if they experienced a qualifying disaster event that caused a covered loss—receive insurance proceeds. The Federal Crop Insurance Program was a “producer certification

program,” requiring farmers to certify and submit truthful and complete information.

In the calendar year fall 2019, Frisbie insured the partnership’s bell peppers under a Federal Crop Insurance Program “Dollar Plan.” This was a so-called “Crop Year Fall 2020”¹ Bell Pepper Dollar Plan.

When submitting a crop-insurance claim under a Bell Pepper Dollar Plan, an insured was required to provide truthful and complete information regarding their crop production and crop sales for the growing season. This was because an insured’s crop-insurance payout was impacted by the number of boxes/cartons of bell peppers that they were able to produce—and the sales revenue that they were able to generate from those boxes/cartons of bell peppers. As part of each federal crop-insurance claim, the insured was required to sign and certify that their reported production was true and complete. The insured was also informed that this information would be used to calculate their loss—and that, if they made false claims or false statements, they could be subject to criminal and civil penalties.

¹ “Crop years” are defined differently than normal calendar years. Here, bell peppers that were planted in the calendar year fall 2019 were considered “Crop Year Fall 2020” bell peppers.

Mark Frisbie's False (Crop Year) Fall 2020 Crop Insurance Claim

On or about February 5, 2020, Frisbie signed a crop year fall 2020 federal crop-insurance claim for the partnership's bell peppers. Frisbie's claim included—and his payout was based on—invoices that he provided which allegedly detailed all the bell pepper production and sales records from the partnership's farm.

The invoices that Frisbie provided to his crop-insurance adjuster—which Frisbie received from Coconspirator 2—detailed that the partnership grew a total of 16,417 cartons of bell peppers and sold the cartons for a total revenue of \$107,280.50.

In reality, Frisbie's partnership had *much more* bell pepper production and sales than he reported—and Frisbie knew as much. Frisbie knowingly signed and submitted a false crop-insurance claim so that the partnership could receive fraudulent crop-insurance proceeds.

As just two examples of Frisbie's knowledge of the claim's falsity:

On November 30, 2019, Frisbie received a "Grower Summary" from Coconspirator 2. The "Grower Summary" showed the partnership's crop production and crop sales from October 15, 2019, to November 30, 2019—a time period entirely associated with Crop Year Fall 2020. The Grower Summary showed the partnership had \$379,661.67 in bell peppers sales during

that time—*more than three times the total fall* bell-pepper sales that Frisbie certified for crop-insurance purposes. Frisbie not only received this Grower Summary before he falsely signed and certified a crop-insurance claim (in February 2020) contradicting it—he also reviewed it and responded:

😊 nice

Later in the season (on January 6, 2020), Frisbie received another “Grower Summary” from Coconspirator 2. That “Grower Summary” showed the partnership’s bell pepper crop production and sales from October 14, 2019, to January 6, 2020—another time period displaying entirely Crop Year Fall 2020 bell peppers (and more fulsomely capturing the season’s sales). This latest Grower Summary showed the partnership had \$1,051,834.97 in bell peppers sales during that time—*nearly ten times the total fall* bell-pepper sales that Frisbie certified for crop-insurance purposes. Frisbie not only received this Grower Summary a month before he falsely signed and certified a crop-insurance claim directly contradicting it—he also reviewed it and responded:

Nice average considering some of the cheap chili’s. Thanks for all the hard work brother!

Based on Frisbie’s false Crop Year Fall 2020 bell-peppers insurance claim—which hid most of the partnership’s bell-pepper production—Frisbie received \$253,391 in indemnity payouts and subsidized producer

premiums. If Frisbie had honestly accounted for the partnership's bell-pepper production, he would have been entitled to *none* of these payments.

Aside from this false Crop Year Fall 2020 bell peppers crop-insurance claim, Frisbie knowingly signed and certified other false federal crop-insurance claims regarding the partnership's bell peppers, including claims for: Crop Year Spring 2020; Crop Year Fall 2021; Crop Year Winter 2021; Crop year Spring 2021; Crop Year Fall 2022; Crop Year Winter 2022; Crop Year Fall 2023; Crop year Fall 2024; Crop Year Winter 2024; Crop Year Spring 2024.

In total on these claims—from Crop Year Fall 2020 to Crop Year Spring 2024—Frisbie reported bell paper sales totaling \$759,022.55. But other records show that the farms that Frisbie oversaw, which Coconspirator 1 was obligated to finance, actually had *more than \$6.7 million* in bell pepper sales. In other words, Frisbie fraudulently concealed more than 88% of the partnership's bell pepper sales.

Based on these fraudulent bell-pepper insurance claims, the Federal Crop Insurance Corporation paid \$1,795,523 in insurance indemnities. Had Frisbie completely and accurately disclosed all of the bell pepper sales in his crop-insurance claims (as he was required to), the Federal Crop Insurance Corporation would have only paid \$134,585. In other words, Frisbie's material

misstatements caused the Federal Crop Insurance Corporation to overpay \$1,660,938 in bell pepper crop-insurance indemnities.

Frisbie also signed and certified a false crop-insurance claim regarding the partnership's round tomatoes in Crop Year Fall 2021. While Frisbie signed and certified a claim reporting just \$34,602.75 in round tomato sales, records show that the actual sales were more than \$177,390.07. In other words, Frisbie fraudulently concealed more than 80% of the partnership's round tomato sales.

Based on this round tomato claim, the Federal Crop Insurance Corporation paid \$87,470 in insurance indemnities. Had Frisbie completely and accurately disclosed all of the round tomato sales in his crop-insurance claim (as he was required to), the Federal Crop Insurance Corporation would *not* have paid *any* indemnity. In other words, Frisbie's material misstatements caused the Federal Crop Insurance Corporation to overpay \$87,470 in round tomato crop-insurance indemnities.

The proceeds that Frisbie received based on his submission of the false crop-insurance claims were shared with Coconspirator 1 and/or used to pay the partnership's farm expenses (which Coconspirator 1 was obligated to pay).

While Frisbie generally understood that Coconspirators 1 and 2 were hiding crop production with respect to other fields on which they were farming certain insured crops, Frisbie did not know or reasonably foresee the extent of insured crops/acres that Coconspirators 1 and 2 were farming—and did not know or reasonably foresee the extent of crop production that they were hiding on those acres.

Frisbie agrees to make complete restitution to the Federal Crop Insurance Corporation for his conduct related to the Federal Crop Insurance Program.

Other Fraud Schemes

During the Frisbie-Coconspirator 1 farming partnership, Frisbie was also involved in other fraudulent government-benefits applications, including fraudulent applications that he submitted on behalf of his entity “Frisbie Farms, LLC” for the Coronavirus Food Assistance Program and Emergency Relief Program.

Frisbie admits to knowingly submitting false and fraudulent “CFAP-1” and “CFAP-2” applications under the Coronavirus Food Assistance Program, and to knowingly submitting a false and fraudulent “ERP Phase 2” application under the Emergency Relief Program. The proceeds from these

fraudulent applications were shared with Coconspirator 1 and/or used to pay the partnership's farm expenses (which Coconspirator 1 was obligated to pay).

Frisbie acknowledges that he was not entitled to *any* ERP Phase 2 proceeds—and that he was entitled to significantly reduced CFAP-1 and CFAP-2 payments. Frisbie agrees to make complete restitution to the Farm Service Agency for his conduct related to the Coronavirus Food Assistance Program and the Emergency Relief Program.

The above is merely a summary of some of the events, some of the persons involved, and other information relating to this case. It does not include, nor is it intended to include, all the events, persons involved, or other information relating to this case.

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or the defendant's attorney with regard to such guilty plea.

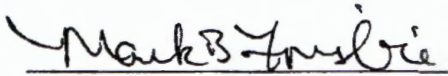
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13. Certification

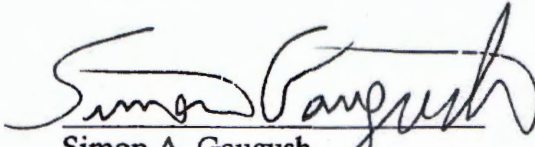
The defendant and the defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that the defendant fully understands its terms.

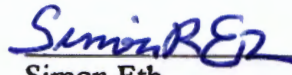
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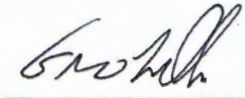
SARA C. SWEENEY
*Attorney for the United States,
Acting under Authority Conferred
by 28 U.S.C § 515*

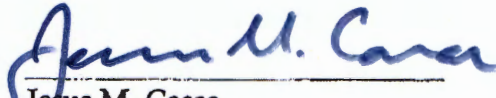

Mark Frisbie
Defendant


Chelsey Hanson
Assistant United States Attorney


Simon A. Gaugush
Attorney for Defendant


Simon Eth
Assistant United States Attorney


Tino M. Lisella
Attorney for Defendant


Jesus M. Casas
Assistant United States Attorney
Chief, Fort Myers Division

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