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5

6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 *-oOo-*

9 UNITED STATES OF AMERICA, )  
10 Plaintiff, ) 2:09-cr-0443-KJD-LRL  
11 vs ) PLEA MEMORANDUM  
12 DAVID M. PERELMAN, )  
13 Defendant. )  
14

15 The United States, by and through DANIEL G. BOGDEN, United States Attorney, and  
16 Roger Yang, Assistant United States Attorney, the defendant, David M. Perelman, and the defendant's  
17 attorney, Rene Valladares, submit this plea memorandum.

18 **I.**

19 **PLEA AGREEMENT**

20 The United States and the defendant have reached the following plea agreement, which  
21 is not binding on the court:

22 **A. The Plea**

23 The defendant, will plead guilty to Count One, charging him with Theft of Government  
24 Funds, in violation of Title 18, United States Code, Section 641, and Count Two, charging him with  
25 Unlawful Wearing of a Service Medal, a violation of Title 18, United States Code, Sections 704(a)  
26 and 704(d).

1 **B. Additional Charges and Dismissal of Other Charges**

2 The United States Attorney's Office for the District of Nevada ("United States") will  
3 bring no additional charge or charges against the defendant arising out of the investigation in the  
4 District of Nevada that resulted in this Plea Memorandum.

5 **C. Sentencing Guideline Calculations**

6 Defendant is aware that the Court will impose his sentence after consideration of the  
7 Federal Sentencing Guidelines and Policy Statements (hereinafter, the "Sentencing Guidelines" or  
8 "Guidelines") and that the Court will determine the applicable Guidelines relying in part on the results  
9 of a Pre-sentence Investigation by the Court's Probation Office, that will commence after his guilty  
10 plea has been entered. Defendant is also aware that the Guidelines are advisory and not binding on  
11 the Court and under certain circumstances, the Court may depart from the applicable Guideline range  
12 and impose a sentence that is either more severe or less severe than the Guideline range. The  
13 defendant is further aware that the sentence imposed will not provide for or permit parole. The  
14 defendant understands and acknowledges that the Court has the authority to impose any sentence up  
15 to the statutory maximum authorized by law for the offense to which he is pleading guilty and that the  
16 defendant may not withdraw his guilty plea solely as a result of the sentence imposed. The parties  
17 stipulate to and recommend that the Court apply the following calculations:

- 18 1. The Base Offense Level is 6. (U.S.S.G. § 2B1.1(a)(1));
- 19 2. The loss amount is greater than \$180,000, therefore an 10-level upward  
20 adjustment applies (U.S.S.G. §2B1.1(b)(1)(H));
- 21 3. A three-level adjustment for acceptance of responsibility applies, pursuant to  
22 U.S.S.G. §§3E1.1(a) and(b), because the defendant timely notified the government of the defendant's  
23 intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and  
24 permitting the government and the court to allocate their resources efficiently. However, no  
25 adjustment for acceptance of responsibility applies if the defendant: (a) fails to make a complete  
26 factual basis for the guilty plea at the time it is entered; (b) is untruthful with the Court or the

1 Probation Office; (c) denies involvement in the offense or provides conflicting statements regarding  
2 the defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct;  
3 (f) fails to appear in court; (g) violates the defendant's pretrial release conditions; (h) engages in any  
4 other conduct set forth in U.S.S.G. § 3E1.1 that demonstrates a lack of acceptance of responsibility.

5 The parties agree that no other Specific Offense Characteristics or adjustments apply.

6 **D. Other Sentencing Considerations**

7 1. The parties agree that the Guideline calculations are based on information now  
8 known and could change upon investigation by the United States Probation Office. It is possible that  
9 factors unknown or unforeseen by the parties to the plea agreement may be considered in determining  
10 the offense level, specific offense characteristics, and other related factors. In that event, the defendant  
11 will not withdraw the defendant's plea of guilty.

12 2. The parties agree that any sentence imposed within the applicable Guideline  
13 sentencing range as determined by the Court will be a "reasonable" sentence under 18 U.S.C.  
14 § 3553(a). Defendant will not seek a downward departure. The defendant may argue for a downward  
15 variance from the applicable sentencing Guideline range as determined by the Court. The United  
16 States will not seek an upward departure and reserves the right to oppose any downward variance.

17 3. The United States will recommend that defendant be sentenced to the low end  
18 of the applicable sentencing Guideline range as determined by the Court, unless defendant commits  
19 any of the acts that could result in a loss of the downward adjustment for acceptance of responsibility.  
20 The government will also recommend that any sentence defendant serves on Count Two be served  
21 concurrent with any other sentence.

22 **E. Fines and Special Assessment**

23 1. The defendant agrees that the court may impose a fine due and payable  
24 immediately upon sentencing.

25 2. The defendant will pay the special assessment of \$100 per count of conviction  
26 at the time of sentencing.

1 **F. Restitution**

2 The defendant agrees to make full restitution in an amount to be determined by the  
3 Court. The defendant understands that any restitution imposed by the Court may not be discharged  
4 in whole or in part in any present or future bankruptcy proceeding.

5 **G. Waiver of Appeal**

6 The defendant is aware that Title 18, United States Code, Section 3742, gives the  
7 defendant a right to appeal the sentence to be imposed for his convictions and that other federal  
8 statutes give the defendant the right to appeal other aspects of his convictions. In exchange for  
9 concessions made by the United States in this agreement, the defendant voluntarily and knowingly  
10 waives the following rights: (a) his right to appeal any sentence that is imposed within the applicable  
11 Sentencing Guideline range as determined by the Court, including his right to appeal the manner in  
12 which that sentence was determined on the grounds set forth in Title 18, United States Code, Section  
13 3742; (b) his right to appeal any aspect of his convictions, including any pretrial suppression matters,  
14 except for the facial validity of the Stolen Valor Act; (c) his right to bring any collateral challenge,  
15 including any claims under 28 U.S.C. § 2255, to his conviction(s), sentence(s) and the procedure by  
16 which the court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective  
17 assistance of counsel. The defendant expressly retains his right to appeal the denial of his Motion to  
18 Dismiss Count Two of the Indictment. This agreement does not affect the rights or obligations of the  
19 United States as set forth in Title 18, United States Code, Section 3742(b); and therefore the United  
20 States retains all its appeal rights.

21 **H. Additional Promises, Agreements, and Conditions**

22 1. In exchange for the United States entering into this agreement, the defendant  
23 agrees that (a) the facts set forth in Section IV of this Plea Agreement shall be admissible against the  
24 defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (1) for any purpose at  
25 sentencing; and (2) in any subsequent proceeding, including a trial in the event the defendant does not  
26 plead guilty or withdraws the defendant's guilty plea, to impeach or rebut any evidence, argument or

1 representation offered by or on the Defendant's behalf; and (b) the defendant expressly waives any  
2 and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth  
3 in Section IV of the Plea Agreement to the extent set forth above.

4           2.       The parties agree that no promises, agreements, and conditions have been  
5 entered into other than those set forth in this plea memorandum, and not will be entered into unless  
6 in writing and signed by all parties.

7 **I. Limitations**

8           This Plea Agreement is limited to the United States Attorney's Office for the District  
9 of Nevada and cannot bind any other federal, state or local prosecuting, administrative, or regulatory  
10 authority. However, this Plea Memorandum does not prohibit the United States through any agency  
11 thereof, the United States Attorney's office for the District of Nevada, or any third party from  
12 initiating or prosecuting any civil proceeding directly or indirectly involving the defendant, including  
13 but not limited to, proceedings under the False Claims Act relating to potential civil monetary liability  
14 or by the Internal Revenue Service relating to potential tax liability.

15 **II.**

16 **PENALTY**

17           1.       The penalty for violating Title 18, United States Code, Section 641, is a  
18 maximum of 10 years in prison and a fine of up to two-hundred and fifty thousand dollars (\$250,000),  
19 or both.

20           2.       The defendant is subject to supervised release for a term for up to three (3)  
21 years.

22           3.       The penalty for violating Title 18, United States Code, Section 704(a) is a  
23 maximum of one year, and a fine of up to one-hundred thousand dollars (\$100,000).

24           4.       The defendant is subject to a term of supervised release on Count Two for up  
25 to one (1) year.

26



1           3.       The defendant specifically admits and declares under penalty of perjury that all  
2 of the facts set forth below are true and correct:

3           Between approximately August 11, 1971, and November 7, 1971, defendant served in  
4 Vietnam. During that time, he was not injured as a result of actions by the enemy, and was not  
5 medically treated for any wounds sustained as a result of enemy actions prior to returning to the United  
6 States and being discharged from the Air Force as an air cargo specialist.

7           On December 11, 1991, defendant accidentally shot himself in the right thigh.  
8 Sometime around March 30, 1993, defendant began claiming that his self-inflicted gunshot wound  
9 was a shrapnel injury sustained during his service in Vietnam. Based on fraudulent documents  
10 submitted by defendant, the Air Force awarded defendant various medals, including a Purple Heart,  
11 on or about February 4, 1994.

12           On February 21, 1995, defendant applied for Veteran's Administration disability  
13 benefits, claiming that his leg injury rendered him disabled. On July 14, 1995, the Veteran's  
14 Administration rated defendant 0% disabled, noting that there was no evidence of a service-related  
15 injury, but the Purple Heart established reasonable doubt in defendant's favor. Defendant applied for  
16 an increased rating on December 19, 1995, and April 25, 1996.

17           As a result of defendant's various claims, the VA rated him 70% disabled (40% from  
18 the leg, 50% from PTSD) on July 22, 1996, retroactive to March 1, 1995. Between March 1, 1995 and  
19 May 30, 2001, defendant received \$73,695.03 in VA disability payments. After June 1, 2001,  
20 defendant began receiving disability payments for 80% disability because of diabetes (a 20%  
21 disability). A Veterans Service Center Manager calculated the payments since June 1, 2001, to be  
22 \$127,026.20, with \$20,721.00 attributable to Perelman's diabetes, and \$106,305.20 for the PTSD and  
23 shrapnel injury.

24           The Veteran's Administration is an agency of the United States, and its disability  
25 benefits are property of the United States.

26       ///

V.

**ACKNOWLEDGMENT**

1  
2  
3 1. The defendant, acknowledges by the defendant's signature below that the  
4 defendant has read this Memorandum of Plea Agreement, that the defendant understands the terms  
5 and conditions, and the factual basis set forth herein, that the defendant has discussed these matters  
6 with the defendant's attorney, and that the matters set forth in this memorandum, including the facts  
7 set forth in Part IV above are true and correct.

8 2. The defendant acknowledges that the defendant has been advised, and  
9 understands, that by entering a plea of guilty the defendant is waiving, that is, giving up, certain rights  
10 guaranteed to the defendant by law and by the Constitution of the United States. Specifically, the  
11 defendant is giving up:

12 a. The right to proceed to trial by jury on the original charges, or to a trial  
13 by a judge if the defendant and the United States both agree;

14 b. The right to confront the witnesses against the defendant at such a trial,  
15 and to cross-examine them;

16 c. The right to remain silent at such trial, with such silence not to be used  
17 against the defendant in any way;

18 d. The right, should the defendant so choose, to testify in the defendant's  
19 own behalf at such a trial;

20 e. The right to compel witnesses to appear at such a trial, and to testify in  
21 the defendant's behalf; and

22 f. The right to have the assistance of an attorney at all stages of such  
23 proceedings.

24 ///

25 ///

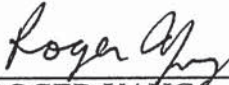
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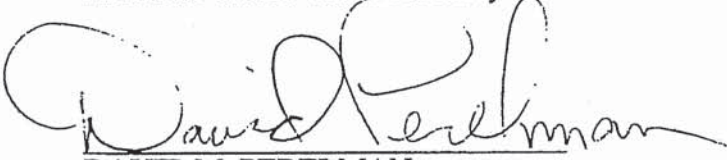
3. The defendant, the defendant's attorneys, and the attorney for the United States acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by and between the parties, and that no other promise has been made or implied by either the defendant, the defendant's attorney, or the attorney for the United States.

DANIEL G. BOGDEN  
United States Attorney


8.16.10  
DATED

  
\_\_\_\_\_  
ROGER YANG  
Assistant United States Attorney

8/11/10  
DATED

  
\_\_\_\_\_  
DAVID M. PERELMAN  
Defendant

8/11/10  
DATED

  
\_\_\_\_\_  
RENE VALLADARES  
Counsel for Defendant