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| CLERK U S DISTRICT COURT DISTRICT OF ARIZONA | |
| BY _____ | DEPUTY |

1 DENNIS K. BURKE
 United States Attorney
 District of Arizona

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UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

10 United States of America,
 11 Plaintiff,
 12 v.
 13 Don Wilson,
 14 Defendant.

CR 09-8059-PCT-GMS-(LOA)
PLEA AGREEMENT

15 Plaintiff, United States of America, and defendant, DON WILSON, hereby agree to the
 16 following disposition of this matter:

PLEA

18 Defendant will plead guilty to Count 2 of the Indictment charging defendant with a
 19 violation of Title 18, United States Code, Section 287, False, Fictitious and Fraudulent Claims,
 20 a Class D felony offense.

TERMS

22 Defendant understands that the Court is required to consider the United States Sentencing
 23 Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining
 24 defendant's sentence. Defendant understands, however, that the Sentencing Guidelines are only
 25 advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise
 26 its discretion to impose any reasonable sentence up to the maximum set by statute for the crimes
 27 of conviction.
 28

1 **1. MAXIMUM PENALTIES**

2 a. A violation of Title 18, United States Code, Section 287, is punishable by a
3 maximum fine of \$250,000.00, a maximum term of imprisonment of 5 years, or both and a term
4 of supervised release of 3 years.

5 b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform
6 Act of 1984, the court shall:

7 i. Order the defendant to make restitution to any victim of the offense unless,
8 pursuant to Title 18, United States Code, Section 3663, the court determines that restitution
9 would not be appropriate in this case;

10 ii. Order the defendant to pay a fine, which may include the costs of probation,
11 supervised release or incarceration, unless, pursuant to Title 18, United States Code, Section
12 3611, the defendant establishes the applicability of the exceptions found therein;

13 iii. Order the defendant, pursuant to Title 18, United States Code, Section 3583
14 to serve a term of supervised release when required by statute or when a sentence of
15 imprisonment of more than one year is imposed, and the court may impose a term of supervised
16 release in all other cases.

17 c. Pursuant to Title 18, United States Code, Section 3013, the court is required to
18 impose a special assessment on the defendant of \$100.00. The special assessment is due at the
19 time the defendant enters the plea of guilty, but in no event shall it be paid later than the time of
20 sentencing.

21 **2. AGREEMENTS REGARDING SENTENCING**

22 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States will recommend a
23 sentence that will not exceed the mid-range of the applicable advisory Guideline range. The
24 government makes the following additional recommendations with regard to sentencing, as may
25 be applicable:

26 1. If the defendant's advisory Guideline sentence is in Zone A or Zone B of
27 the Sentencing Table, the government will recommend, pursuant to
28 U.S.S.G. § 5C1.1(c)(3), a sentence of probation without any period of
incarceration.

1 2. If the defendant's advisory Guideline sentence is in Zone C of the
2 Sentencing Table, the government will recommend, pursuant to U.S.S.G.
3 § 5C1.1(d)(2), that the Court substitute community confinement or home
4 detention for one-half of the term of imprisonment.

5 b. Defendant understands that the court is neither a party to nor bound by this
6 agreement and specifically that the United States' recommendation is not binding on the court,
7 and the court may impose any sentence provided for by law.

8 c. If the court, after reviewing this plea agreement, concludes that any provision is
9 inappropriate, it may reject the plea agreement, giving defendant, in accordance with
10 Fed. R. Crim. P. 11(c)(5), an opportunity to withdraw the guilty plea.

11 d. The United States retains the unrestricted right to make any and all statements it
12 deems appropriate to the Probation Office and to make factual and legal responses to any
13 statements made by the defendant or defense counsel or objections to the presentence report or
14 to questions by the court at the time of sentencing.

15 e. Assuming the defendant makes full and complete disclosure to the Probation
16 Department of the circumstances surrounding the defendant's commission of the offense and,
17 if the defendant demonstrates an acceptance of responsibility for this offense up to and including
18 the time of sentencing, the United States will recommend a two-point reduction in the applicable
19 sentence guideline offense level, pursuant to Section 3E1.1 of the Guideline

20 f. This plea agreement is expressly conditioned upon the accuracy of the defendant's
21 criminal history as known by the government at the time of the plea. The discovery of any
22 criminal history in addition to that known shall entitle the government to withdraw from this
23 agreement.

24 **3. AGREEMENT TO MAKE RESTITUTION**

25 Defendant specifically agrees to make restitution to the Department of Veterans Affairs
26 in the amount of \$55,030.00.

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1 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

2 Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States will dismiss the following
3 charges:

4 a. **Count 1:** False Statements, and; **Count 3:** Theft of Government Funds, at the time
5 of sentencing.

6 b. This office will not prosecute the defendant for any other offenses committed by
7 the defendant, and known by the government, in connection with this matter.

8 This agreement does not, in any manner, restrict the actions of the United States in any
9 other district nor bind any other United States Attorney's Office.

10 c. The United States is not presently aware of any federal investigations or charges.

11 **5. WAIVER OF DEFENSES AND APPEAL RIGHTS**

12 The defendant waives any and all motions, defenses, probable cause determinations, and
13 objections which the defendant could assert to the indictment or information or to the Court's
14 entry of judgment against the defendant and imposition of sentence upon the defendant,
15 providing the sentence is consistent with this agreement. The defendant further waives: (1) any
16 right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the
17 imposition of sentence upon defendant under Title 18, United States Code, Section 3742
18 (sentence appeals); and (3) any right to collaterally attack defendant's conviction and sentence
19 under Title 28, United States Code, Section 2255, or any other collateral attack. The defendant
20 acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the
21 defendant might file challenging his conviction or sentence in this case.

22 **6. PERJURY AND OTHER FALSE STATEMENT OFFENSES OR OTHER**
23 **OFFENSES**

24 Nothing in this agreement shall be construed to protect the defendant in any way from
25 prosecution for perjury, false declaration or false statement, or any other offense committed by
26 defendant after the date of this agreement. Any information, statements, documents, and
27 evidence which defendant provides to the United States pursuant to this agreement may be used
28 against the defendant in all such prosecutions.

1 **7. REINSTITUTION OF PROSECUTION**

2 If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the
3 United States will be free to prosecute the defendant for all charges of which it has knowledge,
4 and any charges that have been dismissed because of this plea agreement will be automatically
5 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the
6 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later
7 charges or proceedings. The defendant understands that any statements made at the time of the
8 defendant's change of plea or sentencing may be used against the defendant in any subsequent
9 hearing, trial or proceeding as permitted by Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

10 **8. DISCLOSURE OF INFORMATION TO U.S. PROBATION OFFICE**

11 The defendant will cooperate fully with the United States Probation Office. Such
12 cooperation will include truthful statements in response to any questions posed by the Probation
13 Department including, but not limited to:

- 14 i. All criminal history information, i.e., all criminal convictions as defined
15 under the Sentencing Guidelines.
- 16 ii. All financial information, e.g., present financial assets or liabilities that
17 relate to the ability of the defendant to pay a fine or restitution.
- 18 iii. All history of drug abuse which would warrant a treatment condition as part
19 of sentencing.
- 20 iv. All history of mental illness or conditions which would warrant a treatment
21 condition as a part of sentencing.

22 **9. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

- 23 a. Nothing in this agreement shall be construed to protect the defendant from civil
24 forfeiture proceedings or prohibit the United States from proceeding with and/or
25 initiate an action for civil forfeiture.
- 26 b. Further, this agreement does not preclude the United States from instituting any
27 civil or administrative proceedings as may be appropriate now or in the future.

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1 **ELEMENTS AND FACTUAL BASIS**

2 **ELEMENTS**

3 If this matter would proceed to trial the government would have to prove each of the
4 following elements of the crime of False, Fictitious, and Fraudulent Claims beyond a reasonable
5 doubt:

- 6 1. The defendant presented to the Department of Veterans Affairs, an agency of the
7 United States, a claim for disability monetary benefits;
- 8 2. Knowing that such claims to be false, fictitious or fraudulent;
- 9 3. Said act having been committed in the District of Arizona;

10 **FACTUAL BASIS**

11 I further admit that if this matter were to proceed to trial the United States could prove
12 the following facts beyond a reasonable doubt:

13 On or about March 21, 2007, in the District of Arizona, the defendant presented a false,
14 forged, and fraudulent United States Army Discharge Form DD 2214, along with the
15 Veterans Administration Form 21-526, an application for Compensation and /or Pension
16 to claim disability monetary benefits from the Department of Veterans Affairs. These
17 benefits are paid to veterans who have been injured or disabled as a result of injuries
18 incurred during active military service. The defendant fraudulently claimed he had
19 suffered medical disabilities in the Vietnam War and that he had been awarded various
20 medals including the Purple Heart. The defendant neither served in the Vietnam War nor
21 received any wounds of war, or medals for such service. Due to his fraudulent
22 representations, Mr. Wilson received \$55,030.00 in medical benefits from the Department
23 of Veterans Affairs between March 2007 and April 2008.

24 I understand that I will have to swear under oath to the accuracy of this statement, and if
25 I should be called upon to testify about this matter in the future, any intentional material
26 inconsistencies in my testimony may subject me to additional penalties of perjury or false
27 swearing which may be enforced by the United States under this agreement.

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DEFENDANT'S APPROVAL AND ACCEPTANCE

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2 I have read each of the provisions of the entire plea agreement with the assistance of
3 counsel and understand its provisions.

4 I have discussed the case and my constitutional and other rights with my attorney. I
5 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty,
6 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present
7 evidence in my defense, to remain silent and refuse to be a witness against myself by asserting
8 my privilege against self-incrimination -- all with the assistance of counsel -- and to be presumed
9 innocent until proven guilty beyond a reasonable doubt.

10 I agree to enter my guilty plea as indicated above on the terms and conditions set forth
11 in this agreement.

12 I have been advised by my attorney of the nature of the charges to which I am entering
13 my guilty plea. I have further been advised by my attorney of the nature and range of the
14 possible sentence and that my ultimate sentence will be determined after consideration of the
15 advisory Sentencing Guidelines. I understand that the Guideline Range referred to herein or
16 discussed with my attorney is not binding on the court and is merely an estimate.

17 My attorney has explained to me the requirements of the standard conditions of probation/
18 supervised release of offenders sentenced in the District of Arizona, or who subsequently come
19 under the supervision of the Court and / or probation officer which are contained in GENERAL
20 ORDER 05-36 of the United States district Court for the District of Arizona which is
21 incorporated into the plea agreement and made a part of this plea agreement. I understand the
22 requirements and agree to the provisions set forth therein.

23 My guilty plea is not the result of force, threats, assurances or promises other than the
24 promises contained in this agreement. I agree to the provisions of this agreement as a voluntary
25 act on my part and I agree to be bound according to its provisions.

26 I fully understand that, if I am placed on supervised release by the court, the terms and
27 conditions of such supervised release are subject to modification at any time. I further
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1 understand that, if I violate any of the conditions of my supervised release, my supervised release
2 may be revoked and upon such revocation, notwithstanding any other provision of this
3 agreement, I may be required to serve a term of imprisonment or my sentence may otherwise be
4 altered.

5 I agree that this written plea agreement contains all the terms and conditions of my plea
6 and that promises made by anyone (including my attorney), and specifically any predictions as
7 to the guideline range applicable, that are not contained within this written plea agreement are
8 without force and effect and are null and void.

9 I am satisfied that my defense attorney has represented me in a competent manner.

10 I am fully capable of understanding the terms and conditions of this plea agreement. I
11 am not now on or under the influence of any drug, medication, liquor, or other intoxicant or
12 depressant, which would impair my ability to fully understand the terms and conditions of this
13 plea agreement.

14 10/26/09
Date



DON WILSON
Defendant

16 **DEFENSE ATTORNEY'S APPROVAL**

17 I have discussed this case and the plea agreement with my client, in detail and have
18 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional
19 and other rights of an accused, the factual basis for and the nature of the offense to which the
20 guilty plea will be entered, possible defenses, and the consequences of the guilty plea including
21 the maximum statutory sentence possible, as well as the requirements of the standard conditions
22 of probation/ supervised release of offenders sentenced in the District of Arizona, or who
23 subsequently come under the supervision of the Court and/ or probation officer which are
24 contained in GENERAL ORDER 05-36 of the United States district Court for the District of
25 Arizona, which is attached to the plea agreement and made a part of this plea agreement. I have
26 further discussed the concept of the advisory sentencing guidelines with the defendant. No
27 assurances, promises, or representations have been given to me or to the defendant by the United
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1 States or by any of its representatives which are not contained in this written agreement. I
2 concur in the entry of the plea as indicated above and on the terms and conditions set forth in this
3 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure that
4 the guilty plea is entered in accordance with all the requirements of Fed. R. Crim. P. 11.

5
6 11/16/09
Date

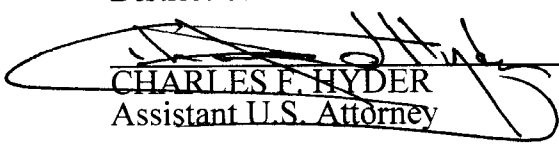

ANNE M. WILLIAMS
Attorney for Defendant

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9 **UNITED STATES' APPROVAL**

10 I have reviewed this matter and the plea agreement. I agree on behalf of the United States
11 that the terms and conditions set forth are appropriate and are in the best interests of justice.

12 DENNIS K. BURKE
13 United States Attorney
14 District of Arizona

15 11/16/09
Date


CHARLES F. HYDER
Assistant U.S. Attorney

16
17 **COURT'S ACCEPTANCE**

18
19 Date

G. MURRAY SNOW
United States District Judge

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