

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

Case No. 18CR3677-W

11 Plaintiff,

12 v.

PLEA AGREEMENT

13
14 DUNCAN D. HUNTER (1),

15 Defendant.
16

17 IT IS HEREBY AGREED between the UNITED STATES OF AMERICA, through
18 its counsel, David D. Leshner, Attorney for the United States Acting Under Authority
19 Conferred by 28 U.S.C. § 515, and Emily W. Allen, W. Mark Conover, and Phillip L.B.
20 Halpern, Assistant United States Attorneys, and Defendant Duncan D. Hunter
21 (“Defendant”), with the advice and consent of Paul Pfingst and Devin Burstein, counsel for
22 Defendant, as follows:

23 **I**

24 **AGREEMENT OF THE PARTIES**

25 Defendant agrees to plead guilty to Count One of the Indictment charging him with
26 conspiring with co-defendant Margaret Hunter to knowingly and willfully convert Duncan
27 D. Hunter for Congress Campaign Committee (the “Campaign”) funds to personal use by
28 using them to fulfill personal commitments, obligations, and expenses that would have

1 existed irrespective of Defendant's election campaign and duties as a federal officeholder,
2 in amounts of \$25,000 and more in a calendar year, in violation of Title 18, United States
3 Code, Section 371.

4 As part of this Plea Agreement ("Agreement"), at the time of sentencing the United
5 States will move to dismiss the remaining counts against Defendant contained in the
6 Indictment in this case (18CR3677-W). The United States agrees not to prosecute
7 Defendant on any of the dismissed charges, unless Defendant breaches this Agreement or it
8 is set aside for any reason. Defendant expressly waives all defenses, including the statute
9 of limitations and the Double Jeopardy Clause, to the reinstatement of any charges
10 dismissed pursuant to this Agreement.

11 Defendant also agrees to give up all rights to appeal and to collaterally attack every
12 aspect of the conviction and sentence. Defendant acknowledges that Defendant has
13 discussed the rights Defendant is giving up in this Agreement and that Defendant is
14 knowingly, intelligently, and voluntarily giving up those rights to appeal and to collaterally
15 attack each and every aspect of the conviction and sentence.

16 II

17 NATURE OF THE OFFENSE

18 A. ELEMENTS EXPLAINED

19 The conspiracy to which Defendant is pleading guilty has the following elements:

- 20 1. Beginning no later than 2010, and continuing up to and including at least 2016,
21 there was an agreement between Defendant and Margaret Hunter to knowingly
22 and willfully convert Campaign funds to personal use by using them to fulfill
23 personal commitments, obligations, and expenses that would have existed
24 irrespective of Defendant's election campaign and duties as a federal
25 officeholder, in amounts of \$25,000 and more in a single calendar year, in
26 violation of Title 52, United States Code, Section 30109(d) and 30114(b);
- 27 2. Defendant became a member of the conspiracy knowing of at least one of its
28 objects and intending to help accomplish it; and

1 3. One of the members of the conspiracy performed at least one overt act for the
2 purpose of carrying out the conspiracy.

3 B. ELEMENTS UNDERSTOOD AND ADMITTED—FACTUAL BASIS

4 Defendant has fully discussed the facts of this case with defense counsel. Defendant
5 has committed each element of the crime and admits that there is a factual basis for this
6 guilty plea. Defendant admits that the following facts are true and undisputed:

7 1. Beginning no later than 2010, and continuing up to and including at least 2016,
8 Defendant and Margaret Hunter (together, “the Hunters”) agreed to knowingly and willfully
9 convert Campaign funds to personal use by using them to fulfill personal commitments,
10 obligations, and expenses that would have existed irrespective of Hunter’s election
11 campaign and duties as a federal officeholder, in amounts of \$25,000 and more in a single
12 calendar year, in violation of Title 52, United States Code, Section 30109(d) and 30114(b).

13 2. The object of the conspiracy was for the Hunters to convert Campaign funds
14 for their own personal benefit and enjoyment, and for the personal benefit of others with
15 whom they had personal relationships.

16 3. Defendant became a member of the conspiracy knowing of its object and
17 intending to help accomplish it.

18 4. Throughout the relevant period, Defendant and Margaret Hunter each
19 concealed the personal nature of many of their campaign expenditures by either falsely
20 stating the expenses were “campaign related” or by falsely reporting the item or service
21 purchased when providing information to the Treasurer.

22 5. In furtherance of the conspiracy, Defendant and Margaret Hunter performed a
23 number of overt acts, including:

24 a. On or about August 28, 2011, in Coronado, California, Defendant spent
25 \$511.03 in Campaign funds at the Hotel del Coronado to take his wife and children
26 out for a family celebration for his daughter’s birthday. To conceal and disguise these
27 personal charges, Defendant falsely informed his Treasurer that all the charges were
28 “campaign related.”

- 1 E. Testify and present evidence and to have witnesses testify on behalf of
2 Defendant; and
3 F. Not testify or have any adverse inferences drawn from the failure to testify.

4 V

5 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED**
6 **WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

7 Any information establishing the factual innocence of Defendant known to the
8 undersigned prosecutor in this case has been turned over to Defendant. The Government
9 will continue to provide such information establishing the factual innocence of Defendant.
10 If this case proceeded to trial, the Government would be required to provide impeachment
11 information for its witnesses. In addition, if Defendant raised an affirmative defense, the
12 Government would be required to provide information in its possession that supports such
13 a defense. By pleading guilty Defendant will not be provided this information, if any, and
14 Defendant waives any right to this information. Defendant will not attempt to withdraw the
15 guilty plea or to file a collateral attack based on the existence of this information.

16 VI

17 **DEFENDANT'S REPRESENTATION THAT**
18 **GUILTY PLEA IS KNOWING AND VOLUNTARY**

19 Defendant represents that:

- 20 A. Defendant has had a full opportunity to discuss all the facts and circumstances
21 of this case with defense counsel and has a clear understanding of the charge
22 and the consequences of this plea. By pleading guilty, Defendant may be
23 giving up, and rendered ineligible to receive, valuable government benefits and
24 civic rights, such as the right to vote, the right to possess a firearm, the right to
25 hold office, and the right to serve on a jury. The conviction in this case may
26 subject Defendant to various collateral consequences, including but not limited
27 to revocation of probation, parole, or supervised release in another case;
28 debarment from government contracting; and suspension or revocation of a

1 professional license, none of which can serve as grounds to withdraw
2 Defendant's guilty plea;

3 B. No one has made any promises or offered any rewards in return for this guilty
4 plea, other than those contained in this agreement or otherwise disclosed to the
5 Court;

6 C. No one has threatened Defendant or Defendant's family to induce this guilty
7 plea; and

8 D. Defendant is pleading guilty because Defendant is guilty and for no other
9 reason.

10 **VII**

11 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 This Agreement is limited to the United States Attorney's Office for the Southern
14 District of California, and cannot bind any other authorities in any type of matter, although
15 the Government will bring this agreement to the attention of other authorities if requested
16 by Defendant.

17 **VIII**

18 **APPLICABILITY OF SENTENCING GUIDELINES**

19 The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a).
20 In imposing the sentence, the sentencing judge must consult the United States Sentencing
21 Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines
22 with defense counsel and understands that the Guidelines are only advisory, not mandatory.
23 The Court may impose a sentence more severe or less severe than otherwise applicable
24 under the Guidelines, up to the maximum in the statute of conviction. The sentence cannot
25 be determined until a presentence report is prepared by the U.S. Probation Office and
26 defense counsel and the Government have an opportunity to review and challenge the
27 presentence report. Nothing in this agreement limits the Government's duty to provide
28 complete and accurate facts to the district court and the U.S. Probation Office.

1 IX

2 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

3 This Agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).
4 The sentence is within the sole discretion of the sentencing judge who may impose the
5 maximum sentence provided by statute. It is uncertain at this time what Defendant's
6 sentence will be. The Government has not made and will not make any representation about
7 what sentence Defendant will receive. Any estimate of the probable sentence by defense
8 counsel is not a promise and is not binding on the Court. Any recommendation by the
9 Government at sentencing also is not binding on the Court. If the sentencing judge does not
10 follow any of the parties' sentencing recommendations, Defendant will not withdraw from
11 this Agreement.

12 X

13 PARTIES' SENTENCING RECOMMENDATIONS

14 A. SENTENCING GUIDELINE CALCULATIONS

15 Although the parties understand that the Guidelines are only advisory and just one
16 factor the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the United
17 States and Defendant will jointly recommend the following Base Offense Level, Specific
18 Offense Characteristics, Adjustments, and Departures:

19	Base Offense Level [USSG §2X1.1 / §2C1.8]	8
20	Value [USSG §2C1.8(b) / §2B1.1(b)(1)(F)]	+10
21	More than 30 Transactions [USSG §2C1.8(b)(4)]	+2
22	Abuse of Position of Trust [USSG §3B1.3]	+2
23	Acceptance of Responsibility [USSG §3E1.1]	-3
24	Departure / Variance [USSG §5K2.0 / 18 USC § 3553(a)]	-4 ¹

25
26 _____
27 ¹ The parties agree that a four-level departure or variance from the applicable
28 Guidelines range is appropriate to account for Defendant's military service and wartime
deployments, which will be further detailed in the Government's sentencing memorandum.

2 B. ACCEPTANCE OF RESPONSIBILITY

3 Despite paragraph A above, the Government need not recommend an adjustment for
4 Acceptance of Responsibility if Defendant engages in conduct inconsistent with acceptance
5 of responsibility including, but not limited to, the following:

- 6 1. Fails to truthfully admit a complete factual basis as stated in the plea at
7 the time the plea is entered, or falsely denies, or makes a statement inconsistent with,
8 the factual basis set forth in this agreement;
- 9 2. Falsely denies prior criminal conduct or convictions;
- 10 3. Is untruthful with the Government, the Court or probation officer; or
- 11 4. Breaches this plea agreement in any way.

12 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS
13 INCLUDING THOSE UNDER 18 U.S.C. § 3553

14 Defendant may request or recommend additional downward adjustments, departures,
15 or variances from the Sentencing Guidelines under 18 U.S.C. § 3553. The Government will
16 oppose any downward adjustments, departures, or variances not set forth in Section X,
17 paragraph A above.

18 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

19 The parties have no agreement as to Defendant's Criminal History Category.

20 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

21 The facts in the "factual basis" paragraph of this agreement are true and may be
22 considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances
23 of the offense under 18 U.S.C. § 3553(a)(1).

24 _____

25 ² The parties agree that a four-level departure or variance from the applicable
26 Guidelines range is appropriate, to account for Defendant's medical history, his role in the
27 offense, his family circumstances, and other personal characteristics warranting a reduced
28 sentence from the Guidelines in this case that shall be further detailed in the Government's
sentencing memorandum.

1 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

2 The Government will recommend that Defendant be sentenced within the advisory
3 guideline range recommended by the Government at sentencing.

4 G. SPECIAL ASSESSMENT/FINE

5 The parties will jointly recommend that Defendant pay a special assessment in the
6 amount of \$100 to be paid forthwith at time of sentencing. Special assessments shall be paid
7 through the office of the Clerk of the District Court by bank or cashier's check or money
8 order made payable to the "Clerk, United States District Court."

9 The parties have no agreement as to any fine that may be imposed.

10 H. SUPERVISED RELEASE/PROBATION

11 If the Court imposes a term of supervised release, Defendant will not seek to
12 terminate early before completing at least 2/3 of the term. If the Court imposes a term of
13 probation, Defendant will not seek to reduce the term or terminate early.

14 XI

15 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

16 Defendant waives (gives up) all rights to appeal and to collaterally attack every aspect
17 of the conviction and sentence. The only exception is Defendant preserves a challenge to
18 the voluntariness of this waiver based on ineffective assistance of counsel.

19 XII

20 BREACH OF THE AGREEMENT

21 Defendant and Defendant's attorney know the terms of this agreement and shall raise,
22 before the sentencing hearing is complete, any claim that the Government has not complied
23 with this agreement. Otherwise, such claims shall be deemed waived (that is, deliberately
24 not raised despite awareness that the claim could be raised), cannot later be made to any
25 court, and if later made to a court, shall constitute a breach of this agreement.

26 Defendant breaches this agreement if Defendant violates or fails to perform any
27 obligation under this agreement. The following are non-exhaustive examples of acts
28 constituting a breach:

- 1 1. Failing to enter into this agreement;
- 2 2. Failing to appear in court;
- 3 3. Attempting to withdraw the agreement;
- 4 4. Failing to abide by any court order related to this case;
- 5 5. Appealing (which occurs if a notice of appeal is filed) or collaterally attacking
- 6 the conviction or sentence in violation of Section XI of this agreement; or
- 7 6. Engaging in additional criminal conduct from the time of arrest until the time
- 8 of sentencing.

9 If Defendant breaches this agreement, Defendant will not be able to enforce any
10 provisions, and the Government will be relieved of all its obligations under this agreement.
11 For example, the Government may pursue any charges including those that were dismissed,
12 promised to be dismissed, or not filed as a result of this agreement (Defendant agrees that
13 any statute of limitations relating to such charges is tolled indefinitely as of the date all
14 parties have signed this agreement; Defendant also waives any double jeopardy defense to
15 such charges). In addition, the Government may move to set aside the agreement. Defendant
16 may not withdraw the agreement based on the Government's pursuit of remedies for
17 Defendant's breach.

18 Additionally, if Defendant breaches this agreement, (i) any statements made by
19 Defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a
20 District Judge); (ii) the factual basis statement in Section II.B in this agreement; and (iii)
21 any evidence derived from such statements is admissible against Defendant in any
22 prosecution of, or any action against, Defendant. This includes the prosecution of the
23 charge(s) that is the subject of this agreement or any charge(s) that the prosecution agreed
24 to dismiss or not file as part of this agreement, but later pursues because of a breach by the
25 Defendant. Additionally, Defendant knowingly, voluntarily, and intelligently waives any
26 argument that the statements and any evidence derived from the statements should be
27
28

1 suppressed, cannot be used by the Government, or are inadmissible under the United States
2 Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the
3 Federal Rules of Criminal Procedure, and any other federal rule.

4 **XIV**

5 **CONTENTS AND MODIFICATION OF AGREEMENT**

6 This agreement embodies the entire agreement between the parties and supersedes
7 any other agreement, written or oral. No modification of this agreement shall be effective
8 unless in writing signed by all parties.

9 **XV**

10 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

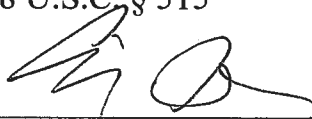
11 By signing this agreement, Defendant certifies that Defendant has read it. Defendant
12 has discussed the terms of this agreement with defense counsel and fully understands its
13 meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

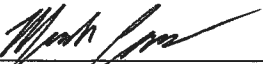
Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and Defendant's counsel did not advise Defendant about what to say in this regard.

DAVID D. LESHNER
Attorney for the United States
Acting Under Authority Conferred by
28 U.S.C. § 515

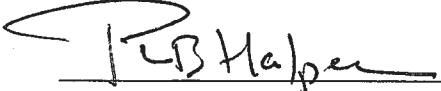


EMILY W. ALLEN
Assistant U.S. Attorney

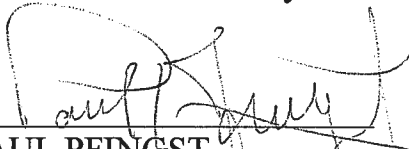
DATED: 11/24/2019



W. MARK CONOVER
Assistant U.S. Attorney



PHILLIP L.B. HALPERN
Assistant U.S. Attorney



PAUL PFINGST
Defense Counsel

DATED:

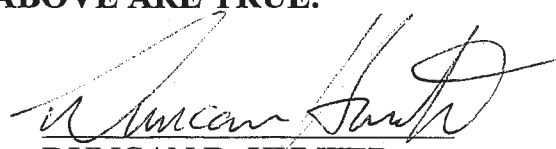
11/25/19



DEVIN BURSTEIN
Defense Counsel

DATED: 11/25/19

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE ARE TRUE.



DUNCAN D. HUNTER
Defendant

DATED: 11/25/19