
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EMINIANO REODICA, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX
[Volume 1 of 2]

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FILED

NOT FOR PUBLICATION

OCT 03 2018

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 17-50186

Plaintiff-Appellee,

D.C. No.
2:94-cr-00121-SJO-1

v.

EMINIANO A. REODICA, Jr., AKA
Roberto Coscolluela, AKA Jun Reodica,
AKA Seal A,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Argued and Submitted September 11, 2018
San Francisco, California

Before: WALLACE, RAWLINSON, and WATFORD, Circuit Judges.

Appellant Eminiano Reodica (Reodica) appeals from the district court's judgment of conviction based upon the denial of his motion to withdraw his guilty plea, as well as the district court's sentencing rulings concerning the losses

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

associated with Reodica's scheme to defraud, denial of acceptance of responsibility adjustment, and restitution.

1. The district court did not abuse its discretion in denying Reodica's motion to withdraw his guilty plea because Reodica failed to demonstrate "a fair and just reason for requesting the withdrawal." *United States v. Yamashiro*, 788 F.3d 1231, 1236 (9th Cir. 2015) (citation omitted). The transcript of the change of plea proceedings reflects that Reodica was not impaired by any physical or mental illness when he entered his guilty plea,¹ that Reodica understood the factual bases of the charges and felt "well enough" to enter his plea, that no mention was made of any mental trauma associated with the illness of Reodica's father, that Reodica confirmed that his guilty plea was not the result of any threats, and that Reodica received adequate legal representation. The district court correctly concluded that Reodica failed to demonstrate that any statements by his counsel coerced Reodica into pleading guilty, and properly considered Reodica's delay in filing his motion to withdraw his guilty plea as a factor supporting denial of the motion. *See United States v. Garcia*, 401 F.3d 1008, 1013 (9th Cir. 2005) (explaining that delay in filing the motion may be considered "as a barometer of the defendant's candor

¹ Although Reodica faults the district court for analyzing the voluntariness of his plea, Reodica's motion was premised in part on his contention that he did not voluntarily enter his plea due to his mental and physical conditions.

with the court about his reasons for withdrawal") (citations omitted). An evidentiary hearing was not warranted because any factual disputes raised by Reodica were resolved by the underlying record. *See United States v. Mayweather*, 634 F.3d 498, 505-06 (9th Cir. 2010) (concluding that an evidentiary hearing was not required due to the lack of factual disputes concerning the defendant's guilty plea).

2. The district court did not clearly err in imposing an upward departure of four levels pursuant to United States Sentencing Guideline § 2F1.1 cmt. n.10 (1987), based on extensive losses resulting from Reodica's fraudulent conduct. The government provided a summary of bank claims totaling \$64,246,964.53 filed in the course of associated bankruptcy proceedings. However, in its more conservative estimation, the government relied on losses of \$33.5 million provided by the Federal Deposit Insurance Corporation based on a worksheet reflecting the "total actual loss from the crime committed by" Reodica. These documents amply supported the district court's imposition of the four-level enhancement. *See United States v. Garro*, 517 F.3d 1163, 1167 (9th Cir. 2008) (reviewing for clear error and explaining that "[t]he loss need not be determined with precision, but need only be

a reasonable estimate given the available information") (citation, alterations, and internal quotation marks omitted).²

3. Neither was the district court's denial of an acceptance of responsibility reduction clearly erroneous. Although the district court mentioned that Reodica delayed his trial through several continuances and did not plead guilty until the day before his trial was scheduled to commence, the district court emphasized that Reodica attempted to withdraw his guilty plea and did not express remorse for his fraudulent conduct until the sentencing hearing. These were sufficient reasons for denying Reodica's request for an acceptance of responsibility reduction. *See United States v. Rodriguez*, 851 F.3d 931, 949 (9th Cir. 2017) (applying a clear error standard of review). We reject Reodica's argument that his sentence must be vacated because the district court considered impermissible factors. *See United States v. Rojas-Pedroza*, 716 F.3d 1253, 1270 (9th Cir. 2013) ("A district court does not commit reversible error, however, simply because it notes the fact that the defendant went to trial, so long as the court bases its final decision on the facts of the case and record as a whole.").

² Reodica also asserts that the district court erred in including interest in the loss amount. However, even excluding interest, the district court's loss calculation would not be clearly erroneous given its conservative estimation of the amount of loss.

4. Reodica asserts that the district court improperly ordered restitution because the government failed to demonstrate that any losses to specific victims were directly attributable to his fraudulent conduct. The government agrees that the restitution order should be vacated and remanded to apply the correct standard. *See United States v. Rodrigues*, 229 F.3d 842, 844 (9th Cir. 2000) (clarifying that “[a]lthough substantial amendments to the [Victim and Witness Protection Act] were enacted in 1990, we apply the statute as it existed at the time of the offense conduct”) (citations omitted). Reodica’s offense conduct occurred prior to 1990, and a remand is warranted for the district court to apply the pre-1990 standard permitting an award of restitution “only for the loss caused by the specific conduct that is the basis of the offense of conviction.” *Id.* at 845 (citations and footnote reference omitted).³

AFFIRMED in part, VACATED and REMANDED in part.

³ Reassignment to a different judge is not warranted because Reodica fails to demonstrate any bias or unfairness warranting reassignment. *See United States v. Johnson*, 812 F.3d 757, 765 (9th Cir. 2016) (rejecting request for reassignment because “[r]eassignment [was] not needed to preserve justice or the appearance of justice and would entail unnecessary waste and duplication”).

APPENDIX 2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 94-00121 SJO

Date January 19, 2017

Present: The Honorable S. James Otero

Interpreter Not Required

Victor Paul Cruz

Not Present

Not Present

Deputy Clerk

Court Reporter/Recorder, Tape No.

Assistant U.S. Attorney

U.S.A. v. Defendant(s):Present Cust. BondAttorneys for Defendants:Present App. Ret.

Eminiano A. Reodica, Jr.

Not xx

Karen L. Goldstein
(special counsel)

Not xx

PROCEEDINGS (in chambers): ORDER DENYING DEFENDANT EMINIANO A. REODICA, JR.'S SUPPLEMENTAL MOTION TO WITHDRAW HIS GUILTY PLEA [Docket Nos. 135, 151]

This matter is before the Court on Defendant Eminiano A. Reodica, Jr.'s ("Defendant" or "Reodica") Supplemental Motion to Withdraw His Guilty Plea ("Motion"), filed October 3, 2016.¹ The United States of America (the "Government") filed an Opposition on October 3, 2016. Defendant filed his Reply on November 7, 2016. The Court found this matter suitable for disposition without oral argument and vacated the hearing set for January 23, 2017. *See* Fed. R. Civ. P. 78(b). For the following reasons, the Court **DENIES** Defendant's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND**A. Factual Background**

This action stems from Defendant's orchestration of a scheme to defraud at least five federally insured financial institutions while he was running the second largest Chevrolet dealership in the United States, which was also the third largest car dealership in the entire United States. Defendant was the owner, principal shareholder, president and chief operating officer of the Grand Wilshire Group of Companies ("GWG"), which included dealerships and businesses involved in the financing and leasing of automobiles. (Redacted Trial Indictment ("Redacted Indictment") ¶¶ 1-2, ECF No. 95.) Many GWG customers financed their auto purchases with a loan from a GWG-affiliated company. To finance its general operating expenses, GWG, through its related companies, obtained lines of credit from a number of financial institutions including the following federally insured financial institutions listed as victims in the indictment: Union Bank, Imperial Savings, First Los Angeles Bank, Manilabank, and First Central Bank. (Redacted Indictment ¶ 6.)

¹ Defendant is also known as "Jun Reodica," "Seal A," and "Roberto Coscolluela."

On April 30, 2016, Defendant lodged his Petition to Withdraw His Guilty Plea. (ECF No. 135.) Because the instant Motion incorporates this Petition, this Order disposes of both the Petition and Motion.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CRIMINAL MINUTES - GENERAL

Under the terms of the contracts with the banks, GWG was to pledge automobile contracts as collateral, collect payments from the customers, remit those payments to the lenders, and notify the lenders of delinquent contracts. (See Redacted Indictment ¶ 7.) Defendant's scheme to defraud financial institutions included simultaneously double-pledging of collateral to two different lenders, either by forging and duplicating motor vehicle contracts or repossessing cars and reselling them without notification to the lenders; fronting payments on behalf of delinquent customers in order to avoid having to repay those loans; and requiring employees to falsely apply for loans for cars of which they did not take possession or make payments on and for which the proceeds of the loans applied for by the employees was directed to the operating capital of the company. (Redacted Indictment ¶ 10.)

The scheme collapsed in approximately August 1988. (Redacted Indictment ¶ 9.) While the potential bankruptcies of his various GWG entities were still being explored, Defendant wired \$500,000 from a Grand Chevrolet bank account to an account in the Philippines, wrote a check for \$250,000 to his then-wife from a Grand Chevrolet account, and left the United States for the Philippines, a country with which the United States did not, at the time of Defendant's flight, have an extradition treaty. (Opp'n 4, ECF No. 154.) Defendant was never seen again at his businesses and remained a fugitive while his employees were prosecuted. (Opp'n 4.)

B. Procedural Background

On February 16, 1994, the Government charged Defendant with a 51 count Indictment for violations of Scheme to Defraud Bank and Savings and Loan Association, 18 U.S.C. § 1344, False Statement in Application for Credit, 18 U.S.C. § 1014; and Causing and Act to Be Done and Aiding and Abetting, 18 U.S.C. § 2. (Indictment, ECF No. 1.) On September 18, 2015, shortly before the October 6, 2015 trial, the Government submitted the Redacted Indictment containing the 26 counts on which the Government sought to proceed to trial. The Redacted Indictment charges Defendant with nine counts of bank fraud in violation of 18 U.S.C. § 1344 (Counts 1, 2, 18-20, 22, 31, 32, 41), and 17 counts of false statements in connection with loan applications in violation of 18 U.S.C. § 1014 (Counts 4-6, 25-27, 29, 33-40, 49, 50).

Four days before trial, at the October 2, 2015 hearing on the motions in limine (the "October 2 Hearing"), Defendant's counsel Richard Callahan ("Mr. Callahan") represented to the Court that Defendant requested substitution of new counsel. (Tr. of Proceedings Oct. 2, 2016 ("Oct. 2 Tr.") 5:23-24, ECF No. 136.) Government counsel was excused from the Courtroom while the Court held an in-camera unseal proceeding. (Oct. 2 Tr. 5:25-6:4, 6:21-22.) When Government counsel returned, the Court stated that it denied Defendant's request for substitution of counsel, and proceeded to hear the motions in limine.² (Mins. of Proceedings Oct. 2, 2016 ("Oct. 2 Mins.") 1-2, ECF No. 124.)

On October 5, 2015, the day before trial, Defendant pled guilty, without a plea agreement, to counts 1-2, 4-6, 18-20, 22, 25-27, 29, 31-41, and 49-50 of the Indictment. (Oct. 5, 2015 Mins. of Guilty Plea, ECF No. 125.) On the parties' stipulation, sentencing was continued from December 5, 2016 to March 6, 2017, (ECF No. 161), and the hearing on this matter was continued from December 5, 2016 to January 23, 2017. (ECF No. 163.)

² On October 18, 2016, the Court concluded that the attorney client privilege in connection with Defendant's Motion had been waived. (ECF No. 153.) The Court ordered the October 2 Hearing transcript to be unsealed and ordered that a copy of the transcript be provided to the Government, (ECF No. 153), and subsequently, to Mr. Callahan and Ms. Goldstein. (ECF No. 159.)

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On April 30, 2016, Defendant lodged a petition to withdraw his guilty plea. (Petition to Withdraw Guilty Plea ("Petition"), ECF No. 135.) On July 21, 2016, the Court appointed special counsel Karen Goldstein ("Ms. Goldstein") for the limited purpose of representing Defendant in the litigation of his Petition. (ECF No. 144.) On October 3, 2016, Defendant, through special counsel Ms. Goldstein, filed the instant Motion, which incorporates the Petition. (Mot. 1, ECF No. 151.)

Defendant seeks to withdraw his guilty plea, based primarily on the following grounds: as of the October 5 Hearing, (1) Defendant was physically ill with the flu and on prescription medications; (2) he was emotionally distraught due to his father's rapidly deteriorating health; (3) he had expected to address only whether he would proceed *pro se* at trial and was unprepared to enter a guilty plea that day; (4) Mr. Callahan failed to file "numerous meritorious and dispositive motions" prior to his change of plea; and (5) Mr. Callahan expressed to Defendant his unfavorable opinion of the case. (See Mot. 6-7.) Defendant argues that the cumulative effect of these factors warrants the Court to grant his Motion. The Court disagrees, and accordingly **DENIES** Defendant's Motion.

II. DISCUSSIONA. Legal Standard

After the court has accepted the defendant's plea of guilty, but before it imposes sentence, the defendant may withdraw the plea if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B) ("Rule 11"). Although the defendant has the burden of demonstrating a fair and just reason for withdrawal of a plea, the standard is "applied liberally." *United States v. Davis*, 428 F.3d 802, 805 (9th Cir. 2005) (citing *United States v. Signori*, 844 F.2d 635, 637 (9th Cir. 1988) (stating that motion to withdraw a plea pre-sentence should be "freely allowed")). "The defendant has no 'right' to withdraw his plea." *United States v. Rubalcaba*, 811 F.2d 491, 493 (9th Cir. 1987) (citing *United States v. Castello*, 724 F.2d 813, 814 (9th Cir. 1984)). The decision to allow withdrawal of a guilty plea is a matter within the discretion of the district court. See *United States v. Ensminger*, 567 F.3d 587, 590 (9th Cir. 2009).

"A court need not find that a plea was invalid as a condition to granting relief under Rule 11(d)(2)." *United States v. Avelar*, No. CR 13-00781 GAF, 2014 WL 5528370, at *2 (C.D. Cal. Nov. 3, 2014) (citing *United States v. Ortega-Ascanio*, 376 F.3d 879, 884 (9th Cir. 2004)). "Fair and just reasons for withdrawal include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening circumstances, or any other reason for withdrawing the plea that did not exist when the defendant entered his plea." *Ortega-Ascanio*, 376 F.3d at 883. The defendant must make a "real showing to obtain relief, which requires more than evidence of buyer's remorse." *United States v. Dowdell*, No. CR 11-00050(A) GAF, 2013 WL 12085165, at *3 (C.D. Cal. Dec. 3, 2013), *aff'd sub nom. United States v. Dowdell*, 622 Fed. App'x 633 (9th Cir. 2015) (citation omitted). As the United States Supreme Court stated:

Given the great care with which pleas are taken under [the] revised Rule 11, there is no reason to view pleas so taken as merely 'tentative,' subject to withdrawal before sentence whenever the government cannot establish prejudice. 'Were withdrawal automatic in every case where the defendant decided to alter his tactics and present his theory of the case to the jury, the guilty plea would become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim. In fact, however, a guilty plea is no such trifle, but a 'grave and solemn act,' which is 'accepted only with care and discernment.'

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United States v. Hyde, 520 U.S. 670, 676-77 (1997) (citations omitted).

B. Analysis

Defendant does not argue that he entered his plea as a result of an inadequate Rule 11 colloquy, or that new evidence or intervening circumstances arose after he entered his plea to warrant withdrawal of his plea. Rather, Defendant appears to request the Court to "liberally" apply Rule 11 to find that the combination of factors constitutes a fair and just reason to withdraw his plea.³ Defendant has not met his burden.

1. Defendant's Physical, Mental, or Emotional Health

First, with respect to Defendant's health, on October 5, 2015, Defendant was on the fifth and final day of his dose of antibiotics for the flu. (See Mot., Ex. A Prescription) (listing five days of antibiotics with final day's dose of one tablet on October 5, 2015)). Throughout the plea colloquy, the Court made several inquiries regarding whether the antibiotics—and their combination with Defendant's preexisting prescription medication—impaired Defendant's judgment or ability to enter his plea, and was satisfied that Defendant was able to enter his plea. (See Oct. 5 Tr. 15:12-17-3 (asking Defendant what medications he has taken in the last 72 hours, and whether Defendant felt "well enough to proceed today," to which Defendant answered in the affirmative); Oct. 5 Tr. 31:4-6 (asking Defendant whether he "feel[s] well enough to enter [his] pleas here today," to which Defendant answered in the affirmative); Oct. 5 Tr. 17:14-17 (asking Mr. Callahan if he believed Defendant was in possession of his faculties and fully competent to enter his pleas, to which Mr. Callahan answered in the affirmative). As to Defendant's contention that his father's rapidly declining health emotionally impaired Defendant's ability to knowingly enter his plea, the Court is not persuaded. At the hearing, the Court explicitly asked Defendant if he had "any condition, any physical condition, mental condition or emotional condition, that could in any way affect your understanding of the proceedings today," to which Defendant responded in the negative. (Oct. 5 Tr. 17:4-7.) The transcript reflects that neither Defendant or his counsel makes any mention of Defendant's father's ill health or its impact on Defendant's state of mind that day.

At the conclusion of the plea colloquy, the Court concluded that it "has had the opportunity to observe Mr. Reodica throughout the taking of his pleas. The Court is satisfied that he has been fully alert and understands everything that has occurred in court today. The Court has taken into consideration the fact that he has—is being treated for the flu, and the Court is fully satisfied that has not affected his ability to understand any of the matters that have been conducted this afternoon." (Oct. 5 Tr. 58:16-23.) The Court then accepted Defendant's plea. (Oct. 5 Tr. 58:23-24.)

The circumstances surrounding Defendant's health on October 5, 2015 were known and discussed by the parties and the Court, and Defendant expressed that he was capable and willing to enter his plea. All things considered, the Court was satisfied that Defendant was competent to enter his plea. On the grounds of his physical, mental, or

³ Defendant does not analyze the factors discussed in *Ortega-Ascanio*, 376 F.3d at 883. Instead, Defendant applies four factors discussed by the First and Second Circuits: (1) the amount of time that has elapsed between the plea and the Petition; (2) whether Defendant is asserting his innocence; (3) the likely voluntariness of the plea; and (4) any prejudice to the Government. (See Mot. 8) (citing *United States v. Torres*, 129 F.3d 710, 715 (2nd Cir. 1997); *United States v. Doyle*, 981 F.2d 591, 594 (1st Cir. 1992)); see Fed. R. Crim. P. 32(d), Advisory Committee Notes (1983 Amendments). Even under these four factors, the Court would arrive at the same conclusion—Defendant has not demonstrated a fair and just reason for withdrawing his plea.

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emotional health, Defendant presents no fair and just reason for his Motion.

2. Mr. Callahan's Statement to Defendant

Second, Defendant argues that Mr. Callahan's advice to Defendant on October 5, 2015 that they "could not win the case," (Petition ¶ 20), added to the pressure to enter a guilty plea. The Court is not persuaded.

"A guilty plea is not voluntary and must be stricken if that free will is overborne by the prosecutor or by the accused's lawyer." *Edwards v. Garrison*, 529 F.2d 1374, 1380 (4th Cir. 1975). While "[s]everal courts have held or indicated that coercion by the accused's counsel can render a plea involuntary," *Iaea v. Sunn*, 800 F.2d 861, 867 (9th Cir. 1986) (collecting cases), such is not the case here. "Mere advice or strong urging by third parties to plead guilty based on the strength of the state's case does not constitute undue coercion" for purposes of withdrawing a plea. *See id.* (citations omitted) (remanding the matter to district court to determine whether coercion was involved, where, *inter alia*, defendant's counsel threatened to withdraw as counsel if defendant continued to refuse to plead guilty). Defendant presents no evidence that Mr. Callahan's unfavorable opinion of Defendant's chances of winning the case was anything beyond counsel's advice to plead guilty. Defendant has not demonstrated evidence that the statement, even when viewed with Defendant's purportedly fragile health, rose to the level of undue coercion. Notably, at this same hearing, Defendant also withdrew his request to represent himself, and chose to retain Mr. Callahan as counsel. (Oct. 5 Tr. 3:16-4:3.)

3. Defendant's Readiness to Enter a Plea at the October 5 Hearing

Third, the Court is not persuaded that Defendant was unprepared to enter a change of plea at the October 5 Hearing. To begin, the Government points to an email from Mr. Callahan to the Government on the morning of October 4, 2015, the day before his change of plea hearing. In the email, Mr. Callahan states that "[i]t appears that the client is willing to resolve this matter. In addition to agreeing to the length of the sentence, his main request is that he be allowed to serve his time in Australia." (Opp'n, Ex. 2.) The Government replied that it was unwilling to enter into a plea agreement with Defendant, but that if Defendant desired to plead guilty, he could plead straight up to all counts in the Redacted Indictment. (Opp'n, Ex. 3.) Defendant retorts that this email correspondence is speculative of Defendant's intention and readiness to plead the following day. (Reply 6-7.) However, Defendant points to no evidence to suggest that Mr. Callahan's email inaccurately reflected Defendant's intent to plead guilty. Indeed, at the start of the October 5 Hearing, Mr. Callahan stated on the record that "**[i]t is Mr. Reodica's desire, as he expressed it to me this morning**, to plead straight up to the remaining charges, which I believe are 26." (Oct. 5 Tr. 4:8-10) (emphasis added). The Court subsequently allowed the parties over four hours to prepare for the change of plea, which cuts against Defendant's argument that he was caught unaware and was unprepared to plead at the hearing. (Oct. 5 Tr. 4:5:18 (noting that court was in recess from 10:49 a.m. to 2:55 p.m.))

Defendant also points to moments of hesitation during the October 5 Hearing in support of his argument that his plea was involuntary. For example, when asked if the factual basis, as read by the Government, was accurate, and whether Defendant had any additional questions of the Court or his counsel, Defendant paused to confer with Mr. Callahan. (Oct. 5 Tr. 40:23-25, 41:25-4.) After conferring with counsel, however, Defendant unequivocally stated to the Court that the factual basis was correct, and that he had no further questions. (Oct. 5 Tr. 41:4-7, 42:5-6.) From the record, the Court does not find that Defendant's plea was made involuntarily or without preparation.

4. Defendant's Five-Month Delay to File His Petition to Withdraw His Plea

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Finally, the five-month delay between the October 5 Hearing and Defendant's Petition to withdraw his plea weakens a finding of a fair and just reason to withdraw his plea. *See United States v. Navarro-Flores*, 628 F.2d 1178, 1184 (9th Cir. 1980) (finding that district court did not abuse its discretion by considering, *inter alia*, the fact that defendant waited over a month to raise the claim that he misunderstood his rights in pleading guilty, and that "[f]rom the timing and circumstances of the application to withdraw the plea, the district court could reasonably have concluded that withdrawal was intended to serve a different purpose than that avowed by appellant") (citation omitted). Defendant's self-serving statement that he "voice[d] his concerns to both family, and to Mr. Callahan, for several months, until he personally wrote a Petition to Withdraw Guilty Plea on February 28, 2016," (Mot. 5), is unsupported. Other than pointing to the vacating of the October 6, 2015 trial date—which is itself an inadequate reason for not filing the Petition sooner—Defendant does not justify the five-month delay.

5. Conclusion

In sum, the Court does not find Defendant's claims—including an impaired physical, mental, or physical state, undue pressure from Mr. Callahan to enter a plea, or lack of preparation—compelling enough to grant the Motion, even when these factors are viewed in toto. *See United States v. Briggs*, 623 F.3d 724, 728 (9th Cir. 2010) (finding that defendant's claimed lack of understanding of consequences of guilty plea, including potential severity of the sentence, was not grounds for granting a motion to withdraw plea). Indeed, Defendant's claims are contravened by his statements at the October 5 Hearing that suggest voluntariness and competency to enter a plea, which the Court affords considerable weight. *See United States v. Ross*, 511 F.3d 1233, 1236 (9th Cir. 2008) ("Statements made by a defendant during a guilty plea hearing carry a strong presumption of veracity in subsequent proceedings attacking the plea.").

III. RULING

For the foregoing reasons, the Court **DENIES** Defendant's Supplemental Motion to Withdraw His Guilty Plea and Defendant's Petition to Withdraw His Guilty Plea. (ECF Nos. 135, 151.)

IT IS SO ORDERED.

APPENDIX 3

1 RICHARD M. CALLAHAN, JR.
2 225 South Lake Avenue, Suite 300
3 Pasadena, CA 91101
4 Telephone: (626) 202-4060
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 UNITED STATES OF AMERICA,) Case No. CR 94-121-SJO
12 Plaintiff,)
13 vs.)
14 EMINIANO REODICA,)
15 Defendant.)
16)
17)

**LODGING OF DEFENDANT'S
PETITION TO WITHDRAW HIS
GUILTY PLEA**

18 Defendant Eminiano Reodica hereby lodges his "Petition to Withdraw Guilty
19 Plea" in this matter.

20 Dated: April 30, 2016.

Respectfully submitted,
THE LAW OFFICES OF
RICHARD M. CALLAHAN, JR.

22 By: 
23 RICHARD M. CALLAHAN, JR.
24 Attorney for Defendant
25 EMINIANO REODICA

TRULINCS 64016112 - REODICA, EMINIANO A JR - Unit: LOS-F-N

FROM: 64016112
TO: Callahan, Richard
SUBJECT: Legal Mail - Declaration of E. A. Reodica, Jr.
DATE: 03/01/2016 09:40:41 AM

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)

Case No. CR 94-121 SJO

Plaintiff)

EMINIANO ABRIAN REODICA, JR.)

Also known as ROBERTO ABRIAN COSCOLLUELA, JR.)

DECLARATION IN SUPPORT

Defendant)

OF PETITION TO WITHDRAW

GUILTY PLEA

PETITION TO WITHDRAW GUILTY PLEA

COMES NOW, the defendant, Eminiano Abrian Reodica, Jr., and hereby declare his petition to withdraw guilty plea, based on the following reasons:

01. The Federal Rules of Criminal Procedure, Rule 11(d)(2)(B), states that "A defendant may withdraw the plea of guilty or nolo contendere, if the defendant can show a fair and just reason for requesting the withdrawal".
02. Defendant believes that if he is allowed to go through the Due Process of Criminal Justice Prosecution of his case, defendant will be able to show that the prosecution cannot prove his guilt beyond a reasonable doubt.
03. Defendant will opt for a jury trial by his peers as provided for, by the constitution, in lieu of a trial by judge, if his petition to withdraw his guilty plea is approved by the Honorable Judge S. James Otero.

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TRULINCS 64016112 - REODICA, EMINIANO A JR - Unit: LOS-F-N

04. Defendant will lodge an omnibus motion to file the motions that had not been lodged for possible constitutional violations by the plaintiff.
05. The indictment and charges should be dropped as they are over the statute of limitation.
06. The indictment and charges should be considered as civil cases rather than criminal as they pertain to business contracts in the ordinary course of doing business.
07. The constitutional protection of individual rights to conduct business within the framework of ordinary course of doing business should not be interfered with by the plaintiff.
08. The constitutional protection of human rights and safeguards against racial discrimination should be observed by the plaintiff.
09. The defendant should be protected against double jeopardy for the alleged fraudulent charges that had already been litigated and decided upon by the Federal Bankruptcy Judge in the U.S. Federal Bankruptcy Court.
10. The defendant should be provided all the written documentation supporting the discoveries, bills of particulars and Brady Material (exculpatory) evidences applicable to his case as provided by the Statute of Fraud~~s~~.
11. Defendant has been preparing his defense arguments since his arrest on November 28, 2012, at a Los Angeles Airport International transit lounge on his way to attending the wedding of his youngest step daughter in Vancouver, Canada. Defendant had planned to pay respects to his ailing father in Azusa, California, together with his defendant's Australian wife, after the Vancouver event.
12. Defendant is confident that his release from detention hearing, a couple of days after his arrest, would have been successful if the judge was not precluded from executing his previously instructed order for defendant's pre-trial release.
13. The judge's order was subject only to surrender of defendant's passport and submission of security letters from defendant's family members.
14. The plaintiff's objection to "flight risk" was a last minute objection by the USAO which caught the USPD and the judge by surprise. It only came about after the presiding judge's expressed satisfaction for the defendant's compliance with his instructions. Defendant should be able to prove that he was not at any time a fugitive from justice. After the defendant spent a considerable amount of time looking for a U.S. source of income, through his former employer's (General Motors Corporation) Vice President for

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Personnel, defendant studied and invested in a real estate company in Seattle WA, acquired several rental properties and vacant lands to develop. When the U.S. property market did not recover for a while, the defendant found an employment opportunity in Australia. He qualified, after years of training in the following sources of income, (1) life and business insurance, (2) tax preparation and bookkeeping, finance intermediary, (3) Thai and Filipino restaurant and (5) student migration agent. He was practicing these professions in a very public manner and attained success in his ventures. He met his second wife who was a widow due to an unfortunate violence that befell her ex-husband. They have been happily married for over 25 years.

15. Defendant would be better able to secure majority of his discovery documents from the plaintiff, in written form, if his withdrawal of guilty plea is approved, as he would have additional valuable time for completion.

16. Defendant would be better able to access the written results of his Chapter 11 filing with the U.S. Federal Bankruptcy Court for the period 1978 to 1998 if his application for withdrawal of his guilty plea is approved. Defendant will be able to show that the investors of Grand Wilshire Companies earned profitable returns from their investments.

17. Defendant was the CEO of five companies, debtors in possession, placed in Chapter 11 by their corporate lawyer, Elwood Lui, a retired Court of Appeals Judge and a respected law partner of Jones Day Reavies and Pogue. The Chapter 11 was concluded and three cash dividend declarations were made, from the period, 1988 to 1998. The final cash dividend distributions from GWC accounts receivables assigned to the Chapter 11 Trustee of Imperial Savings Association aka Imperial Federal Savings Association, RTC/FDIC, should have been deposited to a constructive trust when ISA/IFSA went to Chapter 11 themselves. The Federal Bankruptcy Trustee of GWC estimated the balance of the GWC accounts receivables assigned to RTC/FDIC to be approximately \$200 Million.

18. In spite of several attempts, defendant has been unsuccessful in securing Chapter 11 written discovery documents evidencing the various stages of the GWC Chapter 11 including the results of fraud investigations, dividend distributions and final approval by the Federal Bankruptcy Court. This should be addressed immediately for a quick resolution of defendant's case which is now on its fourth year at the US District Court of the Central District of California.

19. Defendant attended a hearing in Judge Otero's Court on October 2, 2015. He came unprepared because of illness, inability to secure medication and due to defendant's misunderstanding of the

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schedule for the day.

20. Defendant was also advised by his legal counsel that "we could not win this case" which conclusion the defendant did not agree with. Defendant requested for a recess to confer with his legal counsel.

21. Defendant, at the resumption of the hearing, notified the judge, of his difficulties in lodging the motions that would have demonstrated the defendant's strong position to gain acquittal from the charges brought against him, since 2013.

22. Defendant was queried by the Honorable Judge Otero, regarding the following items:

(1) Does the defendant have a replacement lawyer, to which the defendant answered no.

(2) Does the defendant want to go pro-se or self represented? Defendant responded yes, because of an honest belief that as an indigent, he would be assigned another legal counsel in lieu of his existing counsel.

(3) Defendant was advised by the Honorable Judge Otero to think carefully about his response to this question and gave the defendant until the next court date to respond.

23. Defendant was also finally arraigned for the current indictment charges, after over 1,000 days. Defendant pled not guilty on all counts.

24. During the intervening 2 days (Oct 3 & 4), Saturday and Sunday, defendant became sick with flu that necessitated a regimen of antibiotics. (The defendant's father, Eminiano Reodica, Sr. also became seriously ill due to a lingering lung problem exacerbated by the winter weather. He passed away in November 2015).

25. Defendant became emotionally and physically distraught when he attended the court hearing on October 5, 2015.

26. Defendant was not able to present to the Hon Judge Otero the additional list of proposed motions for defendant that his legal counsel had not been able to lodge before this date.

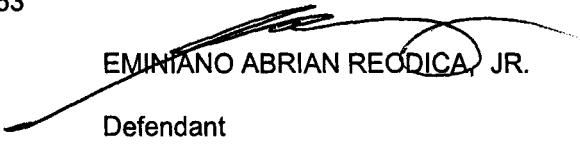
27. At this juncture, defendant was not in a stable condition to fully appreciate the events which transpired. While in distress and contrary to his plea of not guilty, the previous Friday, defendant pled guilty and responded to the questions asked by the Hon Judge Otero.

28. Defendant came back to court on October 6, 2015. He was picked up at 4:00 AM by the US Martial and brought to court. He was determined to withdraw his guilty plea but he found out that the scheduled court hearing, had been cancelled.

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29. Defendant had continued expressing his instructions to withdraw his guilty plea to the legal counsel, which led to today's filing.
30. Now comes the defendant in the Court of Honorable Judge Otero, and thereby, file this declaration to withdraw his guilty plea in the interest of justice and due process.

This declaration has been completed on this the 28th day of February 2016, at the Metropolitan Detention Center-Los Angeles, P O Box 1500, Los Angeles, CA 90053



EMINIANO ABRIAN REODICA, JR.

Defendant

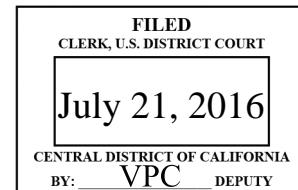
Copy sent this 28th of February 2016 to each one of the following:

Ruth C. Pinkel
Assistant United States Attorney
1200 United States Courthouse
312 North Spring Street
(213) 894-6077

Richard M. Callahan, Jr.
Attorney for the Defendant
225 South Lake Avenue, Suite 300
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APPENDIX4

1 RICHARD M. CALLAHAN, JR.
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6 Attorney for Defendant
7 EMINIANO REODICA

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 UNITED STATES OF AMERICA,) Case No. CR 94-121-SJO
12 Plaintiff,) **ORDER APPOINTING COUNSEL**
13 vs.) **FOR LIMITED PURPOSE**
14 EMINIANO REODICA, *et al.*,)
15 Defendants.)
16 _____)

17 GOOD CAUSE BEING SHOWN, IT IS HEREBY ORDERED that attorney
18 Karen Goldstein, 1645 N. Vine Street, Suite 306, Los Angeles, CA, 90028,
19 kgoldstein@klgcrimnaldefense.com, 213-458-3554, is appointed pursuant to the
20 Criminal Justice Act, 18 U.S.C. § 3006A, to act as "special counsel" for defendant
21 Reodica for the limited purpose of representing Mr. Reodica in the litigation of his
22 petition to withdraw his guilty plea in this case [Doc. No. 135]. Special counsel may
23 file any supplemental papers regarding the petition no later than August 1, 2016; the
24 government shall file its opposition to the petition no later than August 22, 2016; Mr.
25 Reodica, through special counsel, may file a reply no later than September 6, 2016.

26 //

27 //

1 The hearing on Mr. Reodica's petition to withdraw his guilty plea is set for
2 September 19, 2016 at 9:00 a.m.

3 Dated this 21st day of July, 2016.

S. James Otero

S. JAMES OTERO
United States District Court

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APPENDIX5

1 LAW OFFICES OF KAREN L. GOLDSTEIN
2 Karen L. Goldstein, Esq. (SBN 229965)
3 1645 N. Vine Street, Suite 306
4 Los Angeles, CA 90028
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5 Attorney for Defendant
6 EMINIANO REODICA

7
8 UNITED STATES DISTRICT COURT FOR THE
9 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION—LOS ANGELES

10 UNITED STATES OF AMERICA,) Case No. CR 94-121-SJO
11 Plaintiff,)
12 v.) **DEFENDANT'S SUPPLEMENTAL
13 MOTION TO WITHDRAW HIS
14 GUILTY PLEA; MR. REODICA'S
15 AMENDED DECLARATION.**
16 Defendant.)
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TO THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE
FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND ASSISTANT UNITED
STATES ATTORNEY, RUTH C. PINKEL:

Defense counsel, Karen L. Goldstein, on behalf of Eminiano Reodica, hereby submits
Defendant's Supplemental Motion to Withdraw His Guilty Plea. This Petition is based on
the attached memorandum of points and authorities, the attached exhibits, all files and
records in this case, including the Defendant's Original Petition to Withdraw His Guilty Plea,
and any further information as may be presented at the hearing.

Dated: October 3, 2016

/s/ Karen L. Goldstein

Law Offices of Karen L. Goldstein

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3 **Federal Cases**

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10 **Federal Rules of Criminal Procedure**

11	Fed.R.Crim.P.11(d)(2)(B)	7
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1 **I. INTRODUCTION**

2 Mr. Reodica was not in a healthy place mentally or physically when he entered his
3 guilty plea on October 5, 2015. He had recently fallen ill with the flu and was taking
4 several prescription medications, including an antibiotic, Azithromycin, to help him
5 recover from the flu and its debilitating symptoms. (*See* Defendant's Declaration in
6 Support of Petition to Withdraw His Guilty Plea at 24-25 [hereinafter "Decl."]); *see also*
7 (Exh. A, Mr. Reodica's MDC Medical Records from October 1, 2015.)

8 At the change of plea hearing, Mr. Reodica felt physically unwell, and was also
9 emotionally devastated, having recently learned of his father's rapidly declining health.
10 (Decl. at 24-25.) The physical and emotional distress he experienced at this time, in
11 combination with the effects of the new medication, compromised his judgment and his
12 ability to appreciate the nature of the hearing and the consequences of his plea. (Decl. at
13 27.) Further, Mr. Reodica had come to court that day expecting to address only whether
14 he would be proceeding *pro per* for his jury trial which was scheduled to commence the
15 very next day. As such he was unprepared for a guilty plea hearing. Notably, for nearly
16 three years prior, since his arrest in November 2012, Mr. Reodica had firmly maintained
17 his innocence. (Decl. at 23.)

18 Lastly, on this same day, Mr. Reodica learned from his attorney, Mr. Callahan,
19 that, "[they]...could not win the case." (Decl. at 20; Amended Decl. at 20.) His
20 attorney's unfavorable opinion, combined with Mr. Reodica's vulnerable physical and
21 emotional state, placed additional pressure on him to enter a guilty plea. All of these
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1 unfortunate circumstances overwhelmed him and resulted in a flawed guilty plea where
2 he did not understand or appreciate the consequences of his actions. (See Decl. at 27;
3 Amended Decl. at 20.)

4 **II. PROCEDURAL HISTORY**

5 On October 5, 2015, Mr. Reodica pleaded guilty to counts 1, 2, 4, 5, 6, 18, 19, 20,
6 22, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 49 and 50 of the Indictment.
7 He entered into an open plea before this Court without a written plea bargain and was
8 represented by appointed counsel, Mr. Callahan.

9 On October 6, 2015, Mr. Reodica sought to withdraw his plea; however, the
10 October 6, 2015 trial date had been vacated so Mr. Reodica was not brought before the
11 Court and was unable to petition the Court for the requested relief. (Decl. at 28.) Mr.
12 Reodica then proceeded to voice his concerns to both family, and to Mr. Callahan, for
13 several months, until he personally wrote a Petition to Withdraw Guilty Plea on February
14 28, 2016 and requested for counsel to file it on his behalf. (Decl. at 29.)

15 On April 30, 2016, Mr. Reodica, through his counsel of record, Richard Callahan,
16 lodged a Petition to Withdraw His Guilty Plea. (Docket No. 135.) On July 22, 2016,
17 CJA counsel, Karen L. Goldstein, was appointed as special counsel by this Court to
18 represent Mr. Reodica for all proceedings pertaining to Mr. Reodica's Petition to
19 Withdraw His Guilty Plea. Counsel respectfully submits Defendant's Supplemental
20 Motion to Withdraw His Guilty Plea on behalf of Mr. Reodica.

A. SPECIFIC GROUNDS FOR WITHDRAWAL

In Mr. Reodica's original Petition to Withdraw His Guilty Plea, he laid out several specific grounds in support of the requested relief, including, that on the date of the change of plea (October 5, 2015):

- 1) He was physically ill with the flu and on prescription medication which compromised his judgment and affected his ability to understand the consequences of his plea. (Decl. at 24; 27);
- 2) He was emotionally distraught due his father's rapidly deteriorating medical condition which also compromised his judgment and affected his ability to understand the consequences of his plea. (Decl. at 25; 27);
- 3) He was unprepared to enter a guilty plea because he came to court expecting to address only whether he would represent himself *pro per* and believed his jury trial would start the next day; (Decl. at 22);
- 4) There were numerous meritorious and dispositive motions that should have been argued on his behalf before he decided whether or not to enter a guilty plea (Decl. at 26);
- 5) He was advised by his attorney on the same day as the change of plea that "they could not win the case" and this legal advice placed additional pressure on him to enter into a guilty plea (Amended Decl. at 20); and
- 6) As a result of Mr. Reodica's medical and emotional instability, including feeling the effects of the flu and prescription antibiotics, the distress of his father's failing

1 health, his belief that the hearing was scheduled to determine whether he would
2 represent himself, his assertion of innocence, and his counsel's unfavorable
3 opinion of the case, Mr. Reodica's judgment was compromised and he was unable
4 to understand the nature of his guilty plea and the constitutional rights that he
5 waived. (Decl. at 24-28.)
6

7 In sum, Mr. Reodica argues that the totality of the circumstances provide a "fair
8 and just reason" to withdraw his guilty plea because he was unable to understand the
9 consequences of his guilty plea and the waiver of his constitutional trial rights. *See*
10 *generally* Fed.R.Crim.P.11(d)(2)(B).
11

12 III. APPLICABLE LAW

13 Federal Rule of Procedure 11(d)(2)(B) states that a defendant may withdraw his
14 guilty plea before sentencing if he can demonstrate a "fair and just reason" for requesting
15 the withdrawal. Fed.R.Crim.P.11(d)(2)(B). The Ninth Circuit has further articulated that
16 a motion to withdraw a guilty plea made before sentencing should be "freely allowed"
17 and that the "fair and just reason" standard should be "applied liberally." *United States v.*
18 *Nagra*, 147 F.3d 875, 880 (9th Cir. 1998); *United States v. Signori*, 844 F.2d 635, 637
19 (9th Cir. 1988.)
20

22 The Ninth Circuit has also clarified that a defendant does not need to prove that
23 his plea was invalid in order to withdraw his or her plea. *See Signori* at 635 ("A fair
24 reading of the broad language of Rule 11(d)(2)(B) . . . establishes that a defendant need
25 not prove that his plea is invalid in order to meet his burden of establishing a fair and just
26

1 reason for withdrawal.”); *see also United States v. Garcia*, 401 F.3d 1008, 1011 (9th Cir.
 2 2005) (holding that the “fair and just reason” standard is simply more generous than the
 3 standard for determining whether a plea is invalid.)

4 In the instant case, there are numerous factors which this Court may consider in
 5 order to evaluate whether Mr. Reodica has put forth a “fair and just reason” for his plea
 6 withdrawal, including: (1) the amount of time that has elapsed between the plea and the
 7 motion; (2) whether the defendant is asserting his innocence; (3) the likely voluntariness
 8 of the plea; and (4) any prejudice to the government. *United States v. Torres*, 129 F.3d
 9 710, 715 (2nd Cir. 1997); *United States v. Doyle*, 981 F.2d 591, 594 (1st Cir. 1992). In
 10 11 the instant case, each of these factors weighs in favor of Mr. Reodica’s motion.

13 **IV. ARGUMENT**

14 **A. MR. REODICA HAS DEMONSTRATED A FAIR AND JUST REASON TO
 15 WITHDRAW HIS PLEA**

16 Analyzing each factor in turn, Mr. Reodica has demonstrated a “fair and just
 17 reason” that his plea should be withdrawn.

18 **1. Amount of Time Elapsed between Guilty Plea and Motion**

19 First, regarding the amount of time that had elapsed between the entry of the plea
 20 and Mr. Reodica’s motion—Mr. Reodica sought to withdraw his guilty plea the very next
 21 day. (Decl. at 28.) Thus, the amount of time which elapsed between his plea and his
 22 motion should have been one day; however, on October 6, 2015, Mr. Reodica was
 23 transported by the U.S. Marshals but was not ultimately brought before the Court because
 24 the trial date had been vacated the previous day. (Decl. at 28.) On this same date, Mr.
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1 Reodica realized the gravity of the mistake he had made the day before and erroneously
2 believed that there was a court hearing where he would be able to voice his concerns and
3 to withdraw his plea. (Decl. at 28.) Of course, Mr. Reodica no longer had a scheduled
4 hearing and was not brought before the Court. As such, he was unable to immediately
5 petition the Court to withdraw his plea.
6

7 Further, Mr. Reodica asserts that despite repeated requests since this day, his
8 counsel did not assist him with filing the motion. (Decl. at 29.) As such, Mr. Reodica
9 was unable to formally petition the Court in writing until February 28, 2016, and the
10 Petition was not actually lodged until April 30, 2016. (Docket No. 135.) Thus, despite
11 the delay in the actual lodging/filing of the original Petition, the amount of time which
12 lapsed between Mr. Reodica's entry of his guilty plea, and his attempt to withdraw the
13 guilty plea, was actually one day. In conclusion, this short amount of time is a factor
14 which weighs in favor of the motion.
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16

17 2. **Continued Assertion of Innocence**

18 Second, regarding the defendant's assertion of innocence, from the very inception
19 of the case, Mr. Reodica asserted his innocence and declared that he wished to go to trial.
20 This is a factor which the Court should strongly consider. *See United States v. Ortega-*
21 *Ascanio*, 376 F. 3d 883, 888 (9th Cir. 2004) (holding that a defendant's claim of innocence
22 may be considered a "fair and just" reason for withdrawal of a plea.) In fact, due to an
23 inadvertent arraignment error, Mr. Reodica had recently pleaded not guilty, on October 2,
24 2015, a mere three days before. (Docket 138, October 2, 2015, Tr. at 41: 23-25.)
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1 Further, it is significant when analyzing this factor to take into consideration that a jury
 2 trial had been scheduled for the very next day, October 6, 2015. Therefore, the last-
 3 minute timing of the guilty plea, on October 5, 2015, corroborates Mr. Reodica's
 4 contention that he has always maintained his innocence and that he only pleaded guilty
 5 due to an unfortunate, and overwhelming, series of physical and emotional
 6 circumstances. In sum, Mr. Reodica's continued assertion of innocence also mitigates in
 7 favor of his motion.

9 **3. Voluntariness of the Plea**

10 Third, and most significantly, the Court should consider the voluntariness of the
 11 plea. Mr. Reodica has articulated several factors, which analyzed together, raise serious
 12 concerns regarding the voluntary nature of his plea. *See Brady v. United States*, 397 U.S.
 13 742, 748 (emphasizing that a defendant's showing that his plea was not voluntary is "the
 14 most important factor" in support of a withdrawal but was not a prerequisite.) At the
 15 change of plea hearing Mr. Reodica was suffering from the flu and taking antibiotics
 16 while simultaneously experiencing emotional distress at learning of his father's failing
 17 health and being swayed by his counsel's advice that the case could not be won. (Decl. at
 18 24-28); *see also* (Docket 138, October 5, 2015, Transcript of Record, at 15:16-25; 16:1-
 19 5.) [Hereinafter "Tr."]

20 Notably, from the very beginning of the change of plea hearing, there were indicia
 21 of hesitation, involuntariness, and lack of understanding, on Mr. Reodica's part. The
 22 Court initially asked whether Mr. Reodica would be pleading to Counts 1, 2, 4, 5, 6, 18,
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1 19, 20, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 38, 40, 49, 50 of the Indictment. Mr.
2 Reodica asked to confer with counsel before responding to this basic question. (Tr. at
3 9:22-25; 10: 1-9.) Then, once Mr. Reodica was sworn under oath, the Court inquired
4 whether Mr. Reodica was taking any medications. (Tr. at 16:1-25.) Mr. Reodica
5 indicated that he was taking several medications: antibiotics for the flu, heart medication
6 for palpitations, high blood pressure medication, and medication for his prostate. (Tr. at
7 16:1-25.) The Court further asked whether he felt the effects of these medications. Mr.
8 Reodica stated “No Your Honor” but he also added, “I have been taking it daily for
9 several years already, *except for the flu.*” (Tr. at 16:24-25.) As such, Mr. Reodica made
10 a point of clarifying, on the record, that the flu medication (and its effects) were new for
11 his body. (Tr. at 16:24-25.) In support of this argument, Exhibit A, has been attached to
12 the instant motion: Mr. Reodica’s MDC medical records. These medical records indicate
13 that he had been prescribed antibiotics—Azithromycin (250mg pills)—and that this
14 regimen appears to have commenced on October 1, 2015, a mere four days before the
15 hearing. (Exh. A.)

16 In response to further questioning regarding his medical condition, Mr. Reodica
17 stated that he felt well enough to proceed and that he was not suffering from “any
18 physical condition, mental condition, or emotional condition” that would have affected
19 his understanding of the hearing. (Tr. at 17:1-3; Tr. at 17:4-7.) Further, the Court later
20 asked if Mr. Reodica felt well enough to enter his plea and he responded in the
21 affirmative. (Tr. at 31:4-6.) However, herein lies the problem and the heart of this
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1 motion: Mr. Reodica was too overwhelmed by physical and emotional distress, as well as
2 the effects of his prescription medication and his counsel's advice, to understand the
3 nature of all the Court's questions and to respond accurately and meaningfully at the plea
4 colloquy. (Decl. at 25; 27.) Mr. Reodica was not clear-headed enough, either physically
5 or emotionally, to answer questions regarding his ability to proceed with the change of
6 plea. Therefore, his answers at the change of plea hearing should not be given their
7 normal weight.

8
9 In support of Mr. Reodica's arguments, there are several additional indicia of
10 hesitation, involuntariness, and lack of comprehension, on Mr. Reodica's part, which
11 occurred throughout the change of hearing. For example, there was a pause in the
12 proceedings after the government explained how the Court could use its discretion to
13 sentence Mr. Reodica up to the statutory maximum. (Tr. at 23:9-21.) At this juncture,
14 Mr. Reodica requested to speak to his attorney. In response to the request, counsel and
15 Mr. Reodica conferred off the record. (Tr. at 23:19-21.) This pause, after a discussion of
16 penalty, is a potential indicia that communication was not clear and/or that there was
17 confusion, or hesitation, on Mr. Reodica's part.

18
19 Then, later on in the proceedings, when asked, "And is everything that the
20 Government said about you and your conduct and intent true and correct?" Mr. Reodica
21 again requested to confer with his counsel, expressing more hesitation and/or possible
22 lack of comprehension. (Tr. at 40:20-25.) This specific hesitation corroborates Mr.
23 Reodica's position that he had consistently maintained his innocence and only entered a
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1 guilty plea due to a combination of physical and emotional distress further compounded
2 by the negative opinion of his counsel.

3 There are numerous other examples from the hearing which also demonstrate
4 hesitation, lack of comprehension, or involuntariness on Mr. Reodica's part. For
5 example, towards the end of the hearing, when the Court asked if Mr. Reodica was guilty
6 of each count, he answered, "At the present time, yes sir, Your Honor?" (Tr. at 41:18-19.)
7 Although the Court asked a follow-up question, to try to clear up any ambiguity, Mr.
8 Reodica's initial, and intuitive, answer was very cryptic. It is a reply which suggests
9 hesitation or lack of comprehension. And finally, when the Court asked if Mr. Reodica
10 had any additional questions about the plea generally, he again asked to confer with
11 counsel. (Tr. at 42:2-8.)

12 As such, looking at the totality of the circumstances—Mr. Reodica's unclear
13 responses and frequent requests to confer with counsel, coupled with his physical and
14 emotional distress, his continued assertion of innocence, as well as the negative advice of
15 his counsel the day before his scheduled jury trial—there exist serious doubts as to the
16 voluntary nature of the plea. In conclusion, the voluntariness (or lack thereof) of the plea
17 also weighs in favor of Mr. Reodica's motion.

18 **4. Prejudice to the Government's Case**

19 Fifth, with respect to potential prejudice to the government, it is unlikely that
20 proceeding to trial one-and-a-half years after the change of plea hearing would prejudice
21

1 the government in any meaningful way.¹ This case was originally filed in 1994. As
2 such, given that over 20 years has elapsed since the case was first filed, any issues with
3 obtaining witness statements, or evidence, would have been challenges which the
4 government would have already encountered, and which would not be made significantly
5 worse by an additional one-and-a-half year delay. As such, this factor also supports Mr.
6 Reodica's motion.

7
8 In conclusion, looking at the totality of the circumstances, including the case being
9 set for trial, Mr. Reodica previously asserting his innocence since 2012, Mr. Reodica
10 experiencing both physical and mental distress at the time of the hearing, taking
11 antibiotics that were new for his body, repeatedly asking to speak with counsel during the
12 plea colloquy, providing several cryptic responses, and being advised by counsel that he
13 could not win the case, Mr. Reodica has demonstrated a "fair and just reason" for
14 withdrawing his plea.

15
16 **B. AMENDMENTS TO MR. REODICA'S DECLARATION**

17
18 In support of this Supplemental Petition, Mr. Reodica would like to make the
19 following amendments to his previously filed Declaration in Support of Petition to
20 Withdraw His Guilty Plea (Decl. at 20; Decl. at 24):²

21
22 20. Defendant was also advised by his legal counsel that "we could not win this case"
23 which conclusion the defendant did not agree with. Defendant requested for a recess to
24 confer with his legal counsel. *His counsel's negative opinion of the case placed
additional pressure on him to enter a guilty plea on that date.*

25
26 ¹ Assuming that a trial date would be set within a few months of this Petition.

27 ² New or amended language is listed in italics.

24. *Starting on October 1, 2015, defendant became sick with flu that necessitated a regimen of antibiotics—Azithromycin (250mg). He began taking these antibiotics on October 1, 2015. (The defendant's father, Eminiano Reodica, Sr. also became seriously ill due to a lingering lung problem exacerbated by the winter weather. He passed away in November 2015).*

As such, counsel respectfully requests for the above amendments to be made to Mr. Reodica's declaration so as to conform with the attached medical records (Exh. A) and with Mr. Reodica's recollection of events.

V. CONCLUSION

In conclusion, counsel respectfully requests that the Court grant Mr. Reodica's motion because the totality of the circumstances demonstrate a "fair and just reason" for withdrawing his plea.

Dated: October 3, 2016

/s/ Karen L. Goldstein
Law Offices of Karen L. Goldstein
Attorney for Defendant, Eminiano Reodica

**MR. REODICA'S AMENDED DECLARATION
IN SUPPORT OF PETITION TO WITHDRAW GUILTY PLEA**

I, Eminano Reodica, hereby declare and state:

20. Defendant was also advised by his legal counsel that "we could not win this case" which conclusion the defendant did not agree with. Defendant requested for a recess to confer with his legal counsel. *His counsel's negative opinion of the case placed additional pressure on him to enter a guilty plea on that date.*

24. *Starting on October 1, 2015, defendant became sick with flu that necessitated a regimen of antibiotics—Azithromycin (250mg). He began taking these antibiotics on October 1, 2015. (The defendant's father, Eminiano Reodica, Sr. also became seriously ill due to a lingering lung problem exacerbated by the winter weather. He passed away in November 2015.)*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 19th day at September, California.

Eminiano Reodica

Exhibit A

TRULINCS [REDACTED] - REODICA, EMINIANO A/JR - Unit: [REDACTED]

FROM: [REDACTED]

TO: Callahan, Richard

SUBJECT: USA vs E A Reodica, Jr

DATE: 11/07/2014 01:23:34 PM

01			
02	LOS ANGELES MDC 535 N ALAMEDA STREET - LOS ANGELES, California 90012 111629-LOS Awad, Adel MD/CD	LOS - F03-607L 10/01/15	
03	REODICA, EMINIANO		
04	Take two tablets (500 MG) by mouth now--then, Take one tablet by mouth each day for 4 more days		
05	10/7/2015 6:14/2 TABS TAKEN 10/8/2015 7am/1 TAB 10/11/2015 2:40/1 TAB		
06	Azithromycin Tab 250 MG (0) Refills 10/01/15 LF1 Refill Until 10/06/15 #6 TAB (0) 1 of 1 Don't Confiscate Before 12/30/15		
07	CAUTION: Federal/State law prohibits transfer of this drug to any person other than patient for whom prescribed.		
08			
09	10/01/15 MEDICAL RECORDS FOR EMINIANO REODICA	64016-112	
10	LOS ANGELES MDC LOS-F03-607L		
11	535 N. ALAMEDA STREET, LOS ANGELES CA	90012	
12			
13	10/01/15 111629 - LOS AWAD ADEL MD/CD		
14			
15	Take two tablets (500 mg) by mouth now...		
16	AND THEN,		
17	Take ONE tablet by mouth EACH DAY FOR		
18	4 more days		
19			
20	Azithromycin Tab 250 MG		
21	(0) REFILLS 10/01/15 LF1 REFILL UNTIL 10/06/15		
22	#6 TAB 1 of 1 Don't confiscate before 12/30/15		
23			
24			
25			

IMOM LOLITA

For the Defense

JGWT _____

APPENDIX6

1 EILEEN M. DECKER
2 United States Attorney
3 LAWRENCE S. MIDDLETON
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5 Chief, Criminal Division
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19
20 Attorneys for Plaintiff
21 UNITED STATES OF AMERICA

22 UNITED STATES DISTRICT COURT

23 FOR THE CENTRAL DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,

25 No. CR 94-121-SJO

26 Plaintiff,

27 GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION TO WITHDRAW
GUILTY PLEA; DECLARATION; EXHIBITS

v.

28 EMINIANO REODICA, JR.,

Hearing Date: December 5, 2016

Defendant.

Hearing Time: 10:00 am

Location: Courtroom of the
Hon. S. James Otero

29
30 Plaintiff United States of America, by and through its counsel
31 of record, the United States Attorney for the Central District of
32 California and Assistant United States Attorney Ruth C. Pinkel,
33 hereby files its Opposition to Defendant's Motion to Withdraw Guilty
34 Plea.

35 This Opposition is based upon the attached memorandum of points
36 and authorities, the Declaration of Ruth C. Pinkel and exhibits

attached thereto, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: October 24, 2016

Respectfully submitted,

EILEEN M. DECKER
United States Attorney

LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division

/s/Ruth C. Pinkel

RUTH C. PINKEL
Assistant United States Attorney

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UNITED STATES OF AMERICA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After pleading guilty to 26 counts on the eve of trial, defendant EMINANO "JUN" REODICA, JR. ("defendant"), has petitioned to withdraw his guilty pleas. Defendant alleges that, pursuant to Fed. R. Crim. P. 11(d)(2)(B), there is a fair and just reason to withdraw his guilty pleas.

8 Although he does not describe it in precisely this way,
9 defendant essentially contends that his guilty pleas were unknowing
10 and involuntary. (Defendant's Supplemental Motion at 6-7 and 10.)
11 In his Supplemental Motion, defendant claims his judgment on October
12 5, 2015, the day of his guilty plea, was compromised by illness and
13 stress, he was unaware he would plead guilty that day because he
14 thought he was attending another kind of hearing, he had many motions
15 he wished to file, and his attorney, in effect, pressured him to
16 plead guilty by stating they "could not win the case." (Id.) In his
17 original petition, defendant claims he was "not in a stable condition
18 to fully appreciate" his guilty plea hearing on October 5, 2015
19 because he was "emotionally and physically distraught." (Petition at
20 5.) In his declaration, defendant claims he came unprepared to the
21 October 2 hearing due to illness and misunderstanding, his counsel
22 told him "he could not win this case," he discussed certain motions
23 with the Court, and was queried by the Court about substitution of
24 counsel and self-representation. (Defendant's Declaration ¶¶ 19-23.)

25 Defendant contends that the "totality of the circumstances"
26 provide a "fair and just reason" for permitting him to withdraw his
27 pleas. (Supplemental Motion at 7.) Defendant calls into question
28 his cognition and mental state and, in essence, defendant claims his

1 counsel was ineffective for not filing numerous motions and because
2 he advised defendant that he could not win the case.

3 Defendant's guilty plea was the result of a strategic decision,
4 which began at least the day prior when his counsel told the
5 government defendant wanted to plead guilty. (Declaration of Ruth C.
6 Pinkel ("Pinkel Dec."), Exhibits 2-3.) For the reasons stated
7 below, defendant's motion is without merit, and the government asks
8 the Court to deny it.

9 **II. STATEMENT OF FACTS**

10 **A. BACKGROUND OF OFFENSE CONDUCT**

11 Defendant Eminiano Reodica, Jr., aka Jun Reodica ("defendant")
12 was originally charged in a fifty-one count indictment with bank
13 fraud and false statements in connection with loan applications in
14 violation of 18 U.S.C. §§ 1344 and 1014. Shortly before trial was
15 set to begin in the Fall of 2015, the government filed a redacted
16 Trial Indictment charging defendant with nine counts of bank fraud in
17 violation of 18 U.S.C. § 1344 (Counts 1, 2, 18-20, 22, 31, 32, 41)
18 and 17 counts of false statements in connection with loan
19 applications in violation of 18 U.S.C. § 1014 (Counts 4-6, 25-27, 29,
20 33-40, 49, 50) (Clerk's Record ("CR") 95). On October 5, 2016,
21 defendant pleaded guilty to all 26 counts of the redacted indictment.

22 The charges to which defendant pleaded stemmed from defendant's
23 orchestration of a scheme to defraud at least five federally insured
24 financial institutions while he was running the second largest
25 Chevrolet dealership in the United States, which was also the third
26 largest car dealership in the entire United States. Specifically,
27 defendant was the owner, principal shareholder, president and chief
28 operating officer of the Grand Wilshire Group of Companies ("GWG"),

1 which was headquartered in Glendora, California. GWG included both
2 dealerships (Grand Chevrolet and Grand Motors) as well as businesses
3 involved in the financing and leasing of automobiles (Grand Wilshire
4 Finance ("GWF"), Grand Wilshire Leasing ("GWL"), Glendale Leasing
5 ("GL"), Grand Rizal Finance ("GRF"), and Grand Wilshire Capital
6 ("GWC")). Many GWG customers financed their auto purchases with a
7 loan from a GWG-affiliated company.

8 To finance its general operating expenses, GWG, through its
9 related companies, obtained lines of credit from a number of
10 financial institutions including the following federally insured
11 financial institutions listed as victims in the indictment: Union
12 Bank, Imperial Savings, First Los Angeles Bank, Manilabank, and First
13 Central Bank. Under the terms of the contracts with the banks, GWG
14 was to pledge automobile contracts as collateral, collect payments
15 from the customers, remit those payments to the lenders, and notify
16 the lenders of delinquent contracts.

17 Defendant's scheme to defraud financial institutions was
18 manifested in many ways, including the following: (1) simultaneously
19 double-pledging of collateral to two different lenders, either by
20 forging and duplicating motor vehicle contracts or repossessing cars
21 and reselling them without notification to the lenders; (2) fronting
22 of payments on behalf of delinquent customers in order to avoid
23 having to repay those loans; and (3) requiring employees through the
24 Employee Loan Investment Program ("ELIP") to falsely apply for loans
25 for cars of which they did not take possession or make payments on
26 and for which the proceeds of the loans applied for by the employees
27 was directed to the operating capital of the company.

28

1 The scheme collapsed in approximately June and July 1988, when
2 Imperial Savings discovered defendant's fraud. Due in part to
3 defendant's conduct, Imperial Savings later failed and was taken over
4 by the Resolution Trust Corporation (which was later succeeded by the
5 FDIC). While the potential bankruptcies of his various GWG entities
6 were still being explored, defendant wired \$500,000 from a Grand
7 Chevrolet bank account to an account in the Philippines, wrote a
8 check for \$250,000 to his then-wife from a Grand Chevrolet account,
9 and left the United States for the Philippines, a country with which
10 the United States did not, at the time of defendant's flight, have an
11 extradition treaty. Defendant was never seen again at his businesses
12 and remained a fugitive while his employees were prosecuted.

13 **B. DEFENDANT'S ARREST TWENTY-FOUR YEARS LATER**

14 In the early morning hours of November 27, 2012, defendant,
15 traveling as Australian citizen Roberto Coscolluela, with his wife
16 and stepdaughter, arrived at Los Angeles International Airport (LAX)
17 on a flight from Brisbane, Australia. After a 13-hour layover,
18 defendant was scheduled to depart the United States for Canada at
19 approximately 9 p.m. that evening. During his entry to the United
20 States, Coscolluela's fingerprint and photograph were taken. The FBI
21 received notification that Coscolluela's fingerprint and photograph
22 matched those of Reodica for whom the government had an active arrest
23 warrant. Shortly before his flight to Canada was to depart,
24 defendant was approached at the gate by two FBI agents who asked him
25 to provide his name and identifying documents. Defendant repeatedly
26 stated his name was Roberto Coscolluela while holding up his
27 Australian passport in the same name. Defendant did not respond
28

1 "yes" or "no" when asked if his name was Eminiano Reodica, Jr.
 2 Defendant denied ever living the United States or having any family
 3 or friends here. Defendant was then arrested. Prior to November 27,
 4 2012, the FBI did not know that defendant was using the Coscolluela
 5 alias.

6 **C. OCTOBER 2, 2015, PRE-TRIAL CONFERENCE AND *IN CAMERA*
 DISCUSSION OF MERITLESS MOTIONS**

7 On October 2, 2015, the parties appeared before the Court for a
 8 motions hearing on the remaining motions in limine. At the outset of
 9 the hearing, which began at 10:25 A.M., defendant, through his
 10 counsel, asked for permission to address the Court. (Reporter's
 11 Transcript ("RT") 10/2/2016, 3:2, 3:25-4:2 (attached hereto as
 12 Exhibit 4).) This request was denied. (Id. at 4:3-5.) After some
 13 discussion with defendant, defense counsel stated that, among other
 14 things, defendant wanted to represent himself and have substitute
 15 counsel. (Id. at 5:7-14, 5:23-24.) At that time, the government
 16 exited the courtroom and the hearing was held in camera.
 17

18 During the in camera hearing, defendant discussed at length
 19 various motion he wished to file, which both his counsel and the
 20 Court concluded were not meritorious. (Underseal RT 10/2/2015, 26-
 21 28, 35.)¹ Defendant, who has bachelor's and master's degrees,
 22 mentioned that he had become a paralegal. (Id. at 33.)

23 When the government re-entered the courtroom, the Court stated
 24 that it denied defendant's request for substitution of counsel and
 25 that defendant would be given the weekend to further consider his
 26 request for self-representation. (Id. at 6:23-7:4.) Defendant then
 27

28 ¹ The government will lodge the underseal transcript prior to
 the hearing.

1 expressly affirmed that he wished to proceed with the motions hearing
2 with defense counsel representing him. (Id. at 7:5-13.) The Court
3 then held argument with regards the pending motions in limine. In
4 total, the hearing lasted nearly two and a half hours. (Id. at 46:4.)

5 **D. OCTOBER 4, 2015 EMAIL STATING DEFENDANT WANTED TO PLEAD
6 GUILTY**

7 On Sunday morning, October 4, 2015, government counsel received
8 an email from defendant's counsel stating that defendant wanted to
9 plead guilty and discussed some of defendant's desired terms.

10 (Pinkel Dec. ¶ 3, Exhibit 2.) The government responded that due to
11 its "repeated [unsuccessful] attempts to resolve" the case and
12 exhaust all plea negotiations by April 2015², and due to the
13 tremendous resources expended over the prior three years to prepare
14 the case for trial, the government declined to enter into a plea
15 agreement with defendant. (Exh. 3.) The government stated that if he
16 chose to plead guilty, defendant could "plead straight up to all
17 counts in the redacted Trial Indictment." (Id.)

18 **E. OCTOBER 5, 2015, MORNING HEARING**

19 On the morning of October 5, 2015, the day before trial,
20 defendant appeared for a hearing to determine whether he wanted to
21 represent himself. Instead, through his counsel, defendant indicated
22 his desire to plead guilty. (RT 10/5/15 at 1, attached hereto as
23 Exhibit 5.) His counsel stated that there was no plea agreement and
24 that defendant wished to pled straight up to the 26 counts in the
25 redacted indictment.

26 DEFENSE COUNSEL: Your Honor, there is no plea offer
27 currently pending. It is Mr. Reodica's desire, as he

28 ² The failure of those prior plea negotiations is reflected in
Exhibit 1, a May 1, 2015, email from defense counsel declining a plea
offer from the government. (See Pinkel Dec. ¶ 2.)

expressed it to me this morning, to plead straight up to the remaining charges, which I believe are 26. I would request, and I have discussed this with Mr. Cruz and also Government counsel, if the matter could be continued until 2:30 this afternoon so both parties have time to prepare, and I can go over his rights with him.

(Id. at 4.)

The parties then ultimately took a five hour break to prepare for the change of plea. (*Id.* at 5 and 7 (noting break from 10:49 am to 3:58 pm.))

F. OCTOBER 5, 2015, GUILTY PLEA HEARING

At the outset of the afternoon guilty plea hearing, which began at 3:58 pm, the Court informed defendant that if the Court accepted his pleas, he would not be able to withdraw the pleas. (Exh. 5 at 30.) The Court then conducted the plea proceeding.

After the government read the very lengthy factual basis, which covered eight pages in the transcript (id. at 32-40), the Court inquired at length whether defendant heard, understood and agreed with the factual basis. (Id. at 40-42.) Although defendant asked to confer with his counsel at two points (id. at 40, 41), he nonetheless stated that he agreed with the factual basis, admitted it (id. at 40-41), and ultimately stated he had no further questions for either the Court or his counsel. (Id. at 41-42)

In response to questions from the Court, defendant said he had enough time to consult with Mr. Callahan and that Mr. Callahan had fully represented him. (*Id.* at 44-45.) Defendant also responded in the affirmative that he was able to understand everything that had occurred so far, that all of his questions had been answered, and that he did not need more time to consult with his counsel before entering his guilty pleas. (*Id.*) Defendant also affirmatively

1 responded when asked if he felt that his attorney had been able to
 2 consider all possible defenses that defendant felt he had. (Id. at
 3 44-45.)

4 The Court then proceeded to accept the guilty pleas to each of
 5 the twenty-six counts (id. at 45-58), set a sentencing date, and
 6 remarked that it was perhaps the longest plea the Court had ever
 7 taken. (Id. at 61-62.)

8 **III. ARGUMENT**

9 **A. LEGAL STANDARD FOR WITHDRAWAL OF GUILTY PLEA**

10 A defendant "has no 'right' to withdraw his [guilty] plea."

11 United States v. Rubalcaba, 811 F.2d 491, 493 (9th Cir. 1986).

12 Federal Rule of Criminal Procedure 11(d)(2) allows a defendant to
 13 withdraw a guilty plea for a "fair and just reason." Fair and just
 14 reasons for withdrawal of a guilty plea include: (1) an inadequate
 15 Rule 11 plea colloquy; (2) newly discovered evidence; (3) intervening
 16 circumstances; or (4) any other reasons for withdrawing the plea that
 17 did not exist when defendant entered his plea. United States v.
 18 Showalter, 569 F.3d 1150, 1154 (9th Cir. 2009); United States v.
 19 McTiernan, 546 F.3d 1160, 1167 (9th Cir. 2008). The defendant bears
 20 the burden of demonstrating the existence of one of these conditions.
 21 Fed.R.Crim. P. 11(d)(2)(B); United States v. Davis, 428 F.3d, 802,
 22 805 (9th Cir. 2005).

23 "After the defendant has sworn in open court that he actually
 24 committed the crimes, after he has stated that he is pleading guilty
 25 because he is guilty, after the court has found a factual basis for
 26 the plea, and after the court has explicitly announced that it
 27 accepts the plea," a plea cannot be withdrawn unless the defendant
 28 demonstrates a fair and just reason for withdrawal. United States v.

1 Hyde, 520 U.S. 670, 676 (1997).

2 In Hyde, the Supreme Court noted:

3 Given the great care with which pleas are taken under the
4 revised Rule 11, there is no reason to view pleas so taken as
5 merely "tentative," subject to withdrawal before sentence
6 whenever the government cannot establish prejudice. Were
7 withdrawal automatic in every case where the defendant decided
8 to alter his tactics and present his theory of the case to the
9 jury, the guilty plea would become a mere gesture, a temporary
10 and meaningless formality reversible at the defendant's whim. In
11 fact, however, a guilty plea is no such trifle, but a "grave and
12 solemn act," which is "accepted only with care and discernment."

13 Id. at 676-77.

14 As explained in detail below, defendant has presented no newly
15 discovered evidence or circumstances that did not exist when he pled
16 guilty. Instead, he seems to have had a change of heart and seeks to
17 shoehorn a veritable cornucopia of pre-existing facts into a failed
18 "fair and just reason" argument. The motion should be denied.

19

20 **B. DEFENDANT'S CLAIM THAT HE WAS PHYSICALLY ILL AT THE TIME OF**
HIS GUILTY PLEA DOES NOT ESTABLISH A FAIR AND JUST REASON
JUSTIFYING WITHDRAWAL OF HIS GUILTY PLEA

21 Defendant contends that he was physically ill from flu and
22 "emotionally devastated" by his father's "rapidly deteriorating
23 medical condition" rendering his plea involuntary.³ (Supplement at
24 6, 10-13.) However, these purported reasons were ones of which
25 defendant was well aware at the time of his guilty pleas. Indeed, he
26 discussed his health with the Court and satisfied the Court he was
27 well enough to proceed with his guilty pleas.

28 Defendant makes much of the fact that he was taking antibiotics
29 and allegedly had the flu, however, that fact has little consequence
30 to this motion. Defendant was on his last day of antibiotics by the

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1 time of his plea. (Ex. A to Supplemental Motion (listing 5 days of
2 antibiotics with 5th day's dose of 1 tablet on "10/5/2015.")) More
3 importantly, the Court took considerable care to question defendant
4 about his health, and observe his responses and demeanor.

5 During his plea colloquy, defendant discussed his medications
6 and, when asked by the Court if he felt well enough to proceed, said
7 "yes." (Exh. 5 at 17.) The Court later asked defendant again if he
8 felt well enough to enter his guilty plea, to which defendant
9 responded, "yes." (Id. at 31.)

10 At the end of the lengthy proceeding, the Court said that it had
11 the opportunity to observe defendant throughout his plea and was
12 satisfied that defendant was fully alert and understood everything
13 that was happening in court. The Court also noted that it had "taken
14 into consideration the fact that . . . defendant [was] being treated
15 for the flu, and the Court is fully satisfied that has not affected
16 his ability to understand any of the matters that have been conducted
17 this afternoon." (Id. at 58.) Defendant's counsel concurred in the
18 Court's assessment. (Id. at 58-59.)

19 Defendant's health and emotional distress about his father's
20 health were not facts unknown to defendant at the time of his guilty
21 plea and do not constitute a fair and just reason to withdraw his
22 guilty plea.

23 **C. DEFENDANT'S CLAIM THAT HE FELT PRESSURED TO PLEAD GUILTY BY
24 HIS ATTORNEY DOES NOT ESTABLISH A FAIR AND JUST REASON
JUSTIFYING WITHDRAWAL OF HIS GUILTY PLEA**

25 Defendant claims he felt pressured to plead guilty by his
26 counsel's opinion that defendant "could not win this case." It
27 appears that counsel made this statement to defendant on Friday,
28 October 2 (Defendant's Declaration ¶¶ 19-20) and on Monday, October 5

1 (Supplemental Motion at 6). However, this fact, either individually,
 2 or combined with other factors, does not constitute a fair and just
 3 reason justifying withdrawal of a guilty plea. "Mere advice or
 4 strong urging by third parties to plead guilty based on the strength
 5 of the state's case does not constitute undue coercion" for purposes
 6 of withdrawal of a plea. Iaea v. Sunn, 800 F.2d 861, 867 (9th Cir.
 7 1986).

8 More importantly, the record tells the story of a defendant
 9 who was completely lucid and understanding of all of the details of
 10 his guilty plea. The Court specifically asked defendant whether
 11 anyone had made any promises, used force or made any threats against
 12 defendant to cause him to plead guilty. (Exh. 5 at 30-31.) After
 13 the government read the very lengthy factual basis (id. at 32-40),
 14 the Court inquired at length whether defendant heard, understood and
 15 agreed with the factual basis. (Id. at 40-42.) Although defendant
 16 asked to confer with his counsel at two points (id. at 40, 41), he
 17 nonetheless stated that he agreed with the factual basis, admitted it
 18 (id. at 40-41), and ultimately stated he had no further questions for
 19 either the Court or his counsel. (Id. at 41-42)

20 In response to questions from the Court, defendant said he had
 21 enough time to consult with Mr. Callahan and that Mr. Callahan had
 22 fully represented him. (Id. at 44-45.) Defendant also responded in
 23 the affirmative that he was able to understand everything that had
 24 occurred so far, that all of his questions had been answered, and
 25 that he did not need more time to consult with his counsel before
 26 entering his guilty pleas. (Id.) Defendant also affirmatively
 27 responded when asked if he felt that his attorney had been able to
 28

1 consider all possible defenses that defendant felt he had. (Id. at
2 44-45.)

3 Defendant's statements during his plea hearing directly
4 contradict his present contention that he did not enter his plea
5 voluntarily and knowingly. "Statements made by a defendant during a
6 guilty plea hearing carry a strong presumption of veracity in
7 subsequent proceedings attacking the plea." United States v.
8 Yamashiro, 788 F.3d 1237 (9th Cir. 2015) (citations omitted).

9 **D. DEFENDANT'S CLAIM THAT HIS GUILTY PLEA WAS INVOLUNTARY DOES
10 NOT PROVIDE A FAIR AND JUST REASON JUSTIFYING WITHDRAWAL OF
11 HIS GUILTY PLEA; HE WAS NOT CAUGHT UNAWARE THAT HE WOULD BE
12 PLEADING GUILTY ON OCTOBER 5, 2015**

13 Defendant claims there is "serious doubt" about the
14 voluntariness of his plea based upon his physical and mental health
15 and his counsel's advice that he could not win the case.
16 (Supplemental Motion at 10.) He contends he was "too overwhelmed by
17 physical and emotional distress, as well as the effects of his
18 prescription medication and his counsel's advice, to understand the
19 nature of all of the Court's questions" at the plea colloquy. (Id.
20 at 12). As explained above and below, these factors, either
21 individually or collectively, do not amount to an involuntary plea
22 and do not constitute a fair and just reason for withdrawal of
23 defendant's guilty plea.

24 As described above in Section B and C, a review of defendant's
25 guilty plea transcript shows defendant to be completely lucid,
26 intelligent and coherent. (Exh. 5 at 17, 31, 40-45, 58-59.)

27 Contrary to his present assertions (Supplemental Motion at 11),
28 defendant's clarifying response to the Court about how long he had
been taking antibiotics, was not a commentary from defendant about

1 the effects of those antibiotics on his body. Instead, it reflected
2 the comments of a meticulous, well-educated, detail-oriented man
3 wanting to explain to the court that he had been taking the other
4 medications for years, but not the antibiotics. As for any negative
5 effects of antibiotics, their use is rather routine and commonplace
6 and generally have little ill effect.

7 Rather than being a complete surprise to him (Supplemental
8 Motion at 4, 6, 10), defendant's guilty plea was the result of
9 conversations with his attorney, which most assuredly took place at
10 least the day before the guilty plea. This fact is evidenced by
11 defense counsel's email to the government on the day before
12 defendant's guilty plea in which he expressed defendant's desire to
13 pled guilty and defendant's request for certain plea terms. (Exh.
14 2.) What is more likely is that defendant and his counsel had many
15 discussions about the possibility of his pleading guilty (see Exh. 3,
16 May 1, 2015 email; Underseal RT 10/2/2015 at 33) and as the trial
17 approached defendant realized, in the face of overwhelming evidence,
18 that pleading guilty was his most prudent option. In any event,
19 defendant's desire to plead guilty was discussed between the parties
20 the day prior to defendant's plea and the government told defendant
21 there would be no plea agreement, but that he would need to plead
22 "straight up." Consistent with these communications, the next
23 morning, defendant's counsel stated in open court, his client's
24 desire to plead guilty, that there was no plea agreement and that
25 defendant wanted to "plead straight up to the remaining charges,
26 which I believe are 26." (Exh. 5 at 4.)

27 The parties then adjourned for 5 hours for the express purpose
28 of giving counsel more time to prepare with defendant. (Id. at 4, 5

1 and 7.) Thus, not only was the plea not a surprise to defendant, it
 2 occurred at defendant's behest and, defendant had a lot of time to
 3 contemplate his guilty plea, which time began at least the day prior
 4 and continued over the 5-hour break before the plea colloquy began.
 5 Courts have found much shorter periods of time to be sufficient to
 6 consider a guilty plea. See Doe v. Woodford, 508 F.3d 563 (9th Cir.
 7 2007) (fact that defendant had two hours to consider a guilty plea,
 8 did not render it involuntary).

9 **E. DEFENDANT'S FAILURE TO TIMELY FILE HIS MOTION IS FURTHER
 10 SUPPORT THAT THERE IS NO FAIR AND JUST REASON JUSTIFYING
 11 WITHDRAWAL OF HIS GUILTY PLEA; THE GOVERNMENT IS PREJUDICED
 12 BY THE DELAY**

13 In determining whether a defendant has provided a fair and just
 14 reason for withdrawing his guilty plea, one factor that a court may
 15 consider is how soon after the guilty plea a defendant filed his
 16 motion. See United States v. Navarro-Flores, 628 F.2d 1178, 1183-84
 17 (9th Cir. 1980); United States v. Barker, 514 F.2d 208, 222 (D.C. Cir.
 18 1975). That is because any delay can be "a barometer of the
 20 defendant's candor with the court about his reasons for withdrawal."
 21 United States v. Garcia, 401 F.3d 1008, 1013 (9th Cir. 2005). If
 22 there is a valid reason for delay, it cannot be counted against
 23 defendant. Id. Here, defendant claims, with no evidentiary support,
 24 that he sought to withdraw his guilty plea the very next day.
 25 (Supplemental Motion at 8-9.) He also claims, with no corroboration,
 26 that he asked his counsel to withdraw his guilty plea. In reality,
 27 defendant waited almost five months before mailing to the Court his
 28 Petition to withdraw his guilty plea, which was dated February 28,
 2016. (CR 131; March 8, 2016, Minute Order rejecting pro se filing.)

1 Moreover, contrary to defendant's assertion, the government has
2 suffered prejudice as a result of the delay. The length of the delay
3 rendered obsolete all of the government's preparations of the trial
4 witnesses. The government expended tremendous resources resurrecting
5 the case⁴ in the three years prior to defendant's plea, a fact the
6 government noted when it declined to extend a written plea agreement
7 on the eve of trial. (See Exh. 3.) All of the witnesses would have
8 to be prepared again. Further buttressing the prejudice is the fact
9 that the charged crimes took place in the 1980s, and fading witness
10 memories have posed a challenge to the government, and already
11 resulted in dismissal of many otherwise righteous counts. See CR 95.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the government respectfully requests
14 that this Court deny defendant's motion to withdraw his guilty plea.

27

28 ⁴Indeed, due to the passage of time, there have been two
different sets of trial teams assigned to this case, along with AUSA
Ruth Pinkel, as it approached the eve of trial two times in 2014 and
2015. (See Notices of Appearance at CR 77 and 92.)

EXHIBIT 1
(5/1/2015
EMAIL)

Pinkel, Ruth (USACAC)

From: Richard Callahan <rmcallahanjr@gmail.com>
Sent: Friday, May 01, 2015 4:23 PM
To: Pinkel, Ruth (USACAC); Alon, Edward (USACAC)
Subject: Reodica

Mr. Reodica wants to thank you for your plea offer, but he must respectfully decline.

Ed, all the best to you as you begin your new venture.

RMC

Richard M. Callahan, Jr., Esq.
225 South Lake Avenue, Suite 300
Pasadena, CA 91101
Telephone: 626.202.4060
Telecopier: 626.794.4676

EXHIBIT 1

EXHIBIT 2
(10/4/2015
EMAIL)

Pinkel, Ruth (USACAC)

From: Richard Callahan <rmcallahanjr@gmail.com>
Sent: Sunday, October 04, 2015 10:45 AM
To: Pinkel, Ruth (USACAC); Paetty, Scott (USACAC); Kumar, Poonam (USACAC)
Subject: Plea offer

Group:

It appears that the client is willing to resolve this matter. In addition to agreeing to the length of the sentence, his main request is that he be allowed to serve his time in Australia. I just had this issue arise in another case. Pursuant to 28 C.F.R. 527.44, such a transfer decision rests in the discretion of the Office of Enforcement Operations of the Criminal Division of DOJ.

Obviously, the timing couldn't be worse for all lawyers involved, but let me know if we can pursue this further.

RMC

Richard M. Callahan, Jr., Esq.
225 South Lake Avenue, Suite 300
Pasadena, CA 91101
Telephone: 626.202.4060
Telecopier: 626.794.4676

EXHIBIT 2

EXHIBIT 3
(10/4/2015
RESPONSE
EMAIL)

Pinkel, Ruth (USACAC)

From: Pinkel, Ruth (USACAC)
Sent: Sunday, October 4, 2015 11:14 AM
To: Richard Callahan; Paetty, Scott (USACAC); Kumar, Poonam (USACAC)
Subject: RE: Plea offer

Hi Rick,

Thank you for providing this information to us. Given the long history of the government's repeated attempts to resolve this case with defendant, including the parties' most recent self-imposed deadline of April 2015 for exhausting all attempts for a plea agreement, the government declines to enter into a plea agreement with defendant. Over the past three years, the government has expended tremendous resources preparing this case for trial. Should defendant desire to plead guilty, he can plead straight up to all counts in the redacted Trial Indictment.

Thank you,

Ruth, Scott & Poonam

From: Richard Callahan [mailto:rmcallahanjr@gmail.com]
Sent: Sunday, October 04, 2015 10:45 AM
To: Pinkel, Ruth (USACAC); Paetty, Scott (USACAC); Kumar, Poonam (USACAC)
Subject: Plea offer

Group:

It appears that the client is willing to resolve this matter. In addition to agreeing to the length of the sentence, his main request is that he be allowed to serve his time in Australia. I just had this issue arise in another case. Pursuant to 28 C.F.R. 527.44, such a transfer decision rests in the discretion of the Office of Enforcement Operations of the Criminal Division of DOJ.

Obviously, the timing couldn't be worse for all lawyers involved, but let me know if we can pursue this further.

RMC

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Pasadena, CA 91101
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Telecopier: 626.794.4676

EXHIBIT 3

EXHIBIT 4

(10/2/2015

TRANSCRIPT)

12 REPORTER'S TRANSCRIPT OF PROCEEDING
13 FRIDAY, OCTOBER 2, 2016
14 10:25 A.M.
15 LOS ANGELES, CALIFORNIA

23 CAROL JEAN ZURBORG, CSR NO. 7921, CCRR
24 FEDERAL OFFICIAL COURT REPORTER
25 312 NORTH SPRING STREET, ROOM 414
 LOS ANGELES, CALIFORNIA 90012
 (213) 894-3539

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3 EILEEN DECKER
4 United States Attorney
5 BY: RUTH C. PINKEL
6 BY: POONAM G. KUMAR
7 BY: SCOTT PAETTY
8 Assistant United States Attorneys
9 United States Courthouse
10 312 North Spring Street
11 Los Angeles, California 90012
12 (213) 894-6077
13 (213) 894-0719
14 (213) 894-6527

15 FOR THE DEFENDANT:

16 RICHARD M. CALLAHAN, JR.
17 Attorney at Law
18 225 South Lake Avenue, Suite 300
19 Pasadena, California 91101
20 (626) 202-4060

21 ALSO PRESENT:

22 CHRISTINA L. GITS, Paralegal

23

24

25

1 | LOS ANGELES, CALIFORNIA; FRIDAY, OCTOBER 2, 2016

10:25 A.M.

--oOo--

4 THE COURTROOM DEPUTY: Calling item number 2: Case
5 number CR 94-00121 SJO; United States of America versus
6 Eminiano A. Reodica, Jr.

7 Counsel, please state your appearances.

8 MS. PINKEL: Good morning, Your Honor. Ruth Pinkel,
9 Poonam Kumar and Scott Paetty for the United States.

10 And, Your Honor, I also wanted to let you know that since
11 we were here last, I got a promotion at the U.S. Attorney's
12 Office. I am chief of a section, so I brought on Ms. Kumar and
13 Mr. Paetty to do more of the day-to-day work in the trial. I
14 will still be here. I will be putting on some witnesses, but
15 they will be doing most of the motions today.

16 THE COURT: Well, congratulations.

17 MS. PINKEL: Thank you.

18 MR. CALLAHAN: Good morning, Your Honor. Richard
19 Callahan on behalf of Mr. Reodica. He is present and in
20 custody. Also with us, Your Honor, is my paralegal in this
21 case, Christina Gits. And I would ask the court's permission
22 to have her sit at counsel table.

25 MR. CALLAHAN: Your Honor, with the Court's

1 indulgence, Mr. Reodica has asked that he be allowed to address
2 the Court before we hear the motions.

3 THE COURT: Mr. Reodica is represented by counsel,
4 so his request to address the Court is denied. So if you wish
5 to address the Court, feel free.

6 MR. CALLAHAN: Your Honor, I think he has some
7 issues that might involve -- would be a conflict for me to
8 raise them myself. Would the Court entertain --

9 THE COURT: What is your request?

10 MR. CALLAHAN: I don't have a request. He just
11 wants to address the Court on issues I'm not totally convinced
12 I understand yet. He just indicated --

13 THE COURT: Well, why don't you consult with him and
14 then indicate to the Court the nature of your request.

15 (Counsel and defendant conferred off the record.)

16 MR. CALLAHAN: Your Honor, Mr. Reodica has indicated
17 to me that he is unable to assist in the motions today because
18 he only just got some of the documents relating to the last
19 motions in limine that I filed I think in the last week. I
20 have presented them to him. He has read most of it. The
21 earlier motions in limine that were filed months ago, I don't
22 have any specific recollection of providing them. It would be
23 my pattern to do so. But I brought all of them here to assist
24 me and will provide those to him as well after the hearing.

25 He also indicates that he is sick physically and mentally,

1 and for that reason he is unable to assist today, and I'm not
2 sure that means throughout the trial. He indicates he is
3 preparing motions, that he has presented some of them to me,
4 and if I understood him correctly, that I was not responding
5 favorably to things that he wanted filed, so he thinks there is
6 a communication issue.

7 Finally, he indicated that he would like to represent
8 himself, if he could have a brief continuance of 30 days. And
9 to chime in, my 2 cents, if that were to occur, I think what
10 could happen is we could still -- we could select a jury on
11 Tuesday, and the Court in its -- if it desires to do so, could
12 continue the testimony for 30 days, approximately, and I could
13 be appointed standby and/or advisory and help him with the
14 process.

15 I want to make sure I represented you correctly.

16 He is nodding his head "yes."

17 THE COURT: I'm not sure where we start first. Is
18 he requesting that he represent himself, or is his first
19 request for substitution of counsel?

20 MR. CALLAHAN: May I have a moment?

21 THE COURT: Yes.

22 (Counsel and defendant conferred off the record.)

23 MR. CALLAHAN: Mr. Reodica indicates he would like
24 new counsel.

25 THE COURT: What we'll do is the first part of

1 today's proceeding will be for the Court to entertain his
2 request for substitution of counsel. And because of the nature
3 of the request, I will have counsel for the Government exit the
4 courtroom.

5 And please remain in the attorney room or the corridor,
6 please.

7 THE COURT: Before we do that, I think we should
8 probably handle our pretrial, which is set for 10:30.

9 THE COURTROOM DEPUTY: Yes. Okay.

10 THE COURT: So I need the file.

11 THE COURTROOM DEPUTY: Yes, Your Honor.

12 THE COURT: Otherwise, counsel will be here for a
13 little bit of time.

14 THE COURTROOM DEPUTY: I'm not sure who this young
15 lady is. May I inquire? You're on what matter?

16 UNIDENTIFIED SPEAKER IN THE AUDIENCE: Just for a
17 class.

18 THE COURTROOM DEPUTY: Stand outside, please.

19 THE COURT: I will need the file.

20 THE COURTROOM DEPUTY: Yes, Your Honor.

21 (Sealed proceedings held outside the presence of
22 Government counsel, not transcribed herein.)

23 THE COURT: The Court has denied the request for
24 substitution of counsel, and Mr. Reodica has made a request to
25 be heard regarding self-representation. I have informed him

1 that I will give him the weekend to think about that issue, and
2 the Court would be prepared to take -- if he wishes to proceed,
3 to take the waivers on Monday. And the Court intends to start
4 this case -- the trial of this case on Tuesday.

5 That being said, Mr. Reodica has made it clear
6 unequivocally he wishes to have Mr. Callahan represent him for
7 the purposes of handling all of the motions that have been
8 placed on the Court's calendar today. He wishes to go forward
9 with that.

10 Am I correct, Mr. Reodica, that's your request, to have
11 Mr. Callahan continue to represent you for purposes of handling
12 the motions only?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Yes?

15 Okay. So we go to the issues of the motions. Let me get
16 my --

17 So the first matter on calendar is the Government's -- and
18 the first matter that's on calendar to address is the
19 Government's motion in limine to preclude what the Government
20 has described as alleged victim negligence. In particular, the
21 Government wishes to preclude the admission of any evidence,
22 either direct or through cross-examination, of any Government
23 witness, and also inclusive of argument, any issue concerning
24 the alleged victim lender's negligence on their part for
25 failing to discover the defendant's alleged scheme to defraud.

1 Mr. Callahan has opposed that request. Mr. Callahan
2 concedes that negligence on the part of the victim, even if
3 proven, would not constitute a defense to the bank fraud
4 allegations. The defendant -- or Mr. Callahan, however,
5 believes that the issue can properly be raised and the matter
6 pursued in reference to the materialities of the alleged
7 statements made by the defendants.

8 Mr. Callahan wishes to explore in cross-examination of
9 certain of the witnesses evidence regarding lender policies.
10 And I will have Mr. Callahan further articulate the position he
11 has taken in reference to the motion here.

12 MR. CALLAHAN: Your Honor, there are really two, in
13 a sense, competing doctrines here. That's why I think it's
14 gotten a little confusing. The general principle, which as you
15 say we concede, is that lender negligence is not an affirmative
16 defense to a fraud charge. That's the law.

17 There is a brief hiccup, however, in that doctrine in
18 which the cases allow for the issue to be utilized when
19 challenging the element of materiality, indeed, for any
20 particular lender, whether the misrepresentations, as alleged,
21 are actually material to the lender deciding to accept the
22 loan. And for that reason, we would like the opportunity to
23 cross-examine or in some cases, perhaps, do a direct
24 examination regarding certain lender practices, to see whether
25 or not these factors, these representations, were, indeed,

1 material to their decision. We think in large part they were
2 not.

3 At this point in time, a number of banks, and including
4 especially, I think, Imperial Savings, which is sort of at the
5 heart of this investigation, was buying any loan they could get
6 to sell on the secondary market by bundling, and for that
7 reason, their policies were dramatically lessened. And so
8 that's the thrust of the argument, that the alleged
9 misrepresentations were not material to the decision.

10 THE COURT: As I understand it, there is a
11 concession that negligence on the part of the lenders is not a
12 defense, but you would like the opportunity to, through
13 cross-examination of certain of the witnesses, to challenge the
14 various lending practices of the lenders, and that you wish to
15 challenge those lending practices to demonstrate, as I
16 understand it, that any alleged or purported misrepresentation
17 made by your client was not material to the decision on their
18 part to provide funding to his company, the company being Grand
19 Wilshire Group.

20 You have cited to *United States versus Maximov*,
21 M-a-x-i-m-o-v, that appears to stand for the proposition that
22 the defendant should be permitted to cross-examine the victim
23 lenders regarding any loose lending practices because the
24 practices are relevant for the jury's determination of the
25 materiality of the defendant's purported misrepresentations.

1 So I'm not sure if there is an actual dispute here that the
2 Government wishes to further pursue.

3 MS. KUMAR: Yes, Your Honor, that is actually what
4 we were going to suggest. Reading *Maximov*, *Kasani* and *Sony*,
5 the defendant has conceded that negligence isn't an acceptable
6 defense. And the Government would agree that looking to
7 certain lending practices can go to materiality in certain
8 instances, and particularly when you're looking at whether the
9 facts that the defendant was misrepresenting would have been
10 relevant to the banks, rather than the fact that
11 misrepresentation was, in fact, happening.

12 And so the Government would say that maybe it's more
13 appropriate for the Court to sort of deal with this on a
14 question-by-question basis where the Government could see that
15 the defense counsel is permitted to ask certain questions along
16 these lines, that the Government would reserve their right to
17 object to questions that it believes exceeds that scope, and
18 ask the Court to keep that in mind as the trial progresses,
19 which is similar to what these district court cases have
20 articulated.

21 THE COURT: Yes. So I think we all agree that
22 negligence, naivety or naivety on the part of the lenders is
23 not a defense to fraud or bank fraud. And -- but at the same
24 time there is case law that stands for the proposition that
25 lending practices -- questions regarding lending practices

1 should be allowed concerning the issue of materiality.

2 So it'd appear that the defendant should be able -- or
3 counsel for the defendant should be able to question the
4 lenders regarding their decision-making procedures generally,
5 and the scope of the questioning should be focused on the
6 lending practices and procedures and then lending policies and
7 procedures. And it's properly -- I think properly addressed in
8 the context of entertaining objections by the Government at the
9 time the questions are asked.

10 Again, separate and apart from this issue, there's the
11 issue of whether the witnesses offered by the Government would
12 open the door to other or additional questions. So the Court
13 is going to allow the defense counsel or Mr. Callahan to ask
14 questions regarding lending practices and procedures of various
15 witnesses associated with the lenders and then allow
16 Mr. Callahan to ask questions of those witnesses concerning any
17 of the information provided on direct examination.

18 So if the lenders or the witnesses place before the jury
19 the decision-making process or their decision-making process in
20 providing financing or credit or loans to the defendant, then
21 Mr. Callahan will have a fair opportunity to cross-examine the
22 witnesses regarding their statements on direct.

23 The Court will also entertain an appropriate jury
24 instruction from the Government regarding the issue and how the
25 jury should treat this issue either when questions are asked or

1 at the conclusion of the case when the jury is asked to
2 deliberate and when instructions are finally provided. So I
3 think there is a balance that has to be achieved here, and it
4 can be accomplished so that the jury is not confused and it's
5 clear to the jury that negligence is not a defense.

6 And the Court intends to issue a more formal written order
7 to, I think, provide guidance to counsel during -- as the
8 case -- to provide guidance to counsel as the case goes forward
9 on that.

10 So we have a motion -- the defendant's -- we go to the
11 defendant's motion in limine. I think there's one Government
12 motion in limine.

13 Is that correct?

14 MS. KUMAR: That's right, Your Honor.

15 THE COURT: Defendant's motion in limine to preclude
16 admission of cooperator Bruce Lee's financial printouts.

17 As I understand it, sometime in 1988 -- just to provide
18 some backdrop, sometime in 1988 the Grand Wilshire Group was
19 close to or near bankruptcy, and the primary lender of GWG at
20 that time -- and the information comes from the pleadings --
21 was Imperial Savings. In mid 1988, I think sometime in July,
22 Mr. Lee, who was the chief financial officer for GMG, had a
23 meeting with one of the executive officers for Imperial
24 Savings, and he told the vice president of Imperial Savings --
25 and the person that I believe he had this conversation with,

1 Mr. Lee had the conversation with, is Mr. Mercer. And he told
2 Mr. Mercer that he, Mr. Lee, and the company, GWG, had
3 participated in fronting payments on behalf of delinquent car
4 buyers so that the company, GWG, would not have to repurchase
5 those vehicles.

6 He told Mr. Lee that he and the company itself and others
7 associated with the company forged auto sales contracts, and
8 then he also provided to Mr. Mercer information regarding the
9 double-selling of auto contracts on repossessed vehicles. And
10 in conjunction with this conversation and the statements,
11 Mr. Lee presented Mr. Mercer with several computer printouts
12 generated by data contained within the filing system of GWG.

13 And the computer printouts, I guess, supported or were
14 consistent with the statements Mr. Lee made to Mr. Mercer in
15 that they reflected the fronted payments. They had information
16 regarding forged documents and then information regarding
17 double -- the alleged double-selling of sold vehicles.

18 And Mr. Callahan has filed his motion to preclude the
19 admission of those documents, and Mr. Callahan has taken the
20 position that the documents should not be received because they
21 do not meet the requirements of Federal Rules of Evidence 8036,
22 business records, and the documents do not comport or meet the
23 requirements of summaries that would be allowed under 1006.

24 So separate and apart from the issue of 8036 and 1006,
25 there appears to be other grounds for the admission of the

1 documents, and that would include 801(d)(2)(C), records
2 admissible under 801(d)(2)(C), because it would appear that the
3 defendant and Lee agreed to provide Imperial Savings with a
4 list of contracts and other documents regarding forged
5 contracts and then information regarding double-sold vehicles.
6 And it would appear that this information could be received
7 under 801(d)(2)(C) or 801(d)(2)(ii), co-conspirator statements.

8 So let me have Mr. Callahan address -- I understand the
9 8036, but let me have you address whether the documents are
10 admissible under 801(d)(2)(C) and 801(d)(2)(ii).

11 MR. CALLAHAN: Your Honor, in response to the
12 Government's arguments regarding these being an authorized
13 admission, I think, as I put in my brief reply, that there is
14 no evidence that these were authorized to be given to
15 Mr. Mercer of Imperial Savings. This was not in furtherance of
16 Mr. Lee's general course of business, and he provided these
17 documents to Mr. Mercer on his own.

18 As far as being a co-conspirator statement, I think, with
19 all due respect, it's hard to imagine how this providing
20 documents to a lender in question could be in furtherance of a
21 conspiracy when, for all intents and purposes, if there was a
22 conspiracy this disclosure killed it. The company was in
23 bankruptcy shortly thereafter, and the criminal investigation
24 began shortly after that. So I don't think either of those two
25 doctrines apply to this particular case.

1 Unless the Court has questions, I can submit.

2 THE COURT: Yeah, it would appear under 801(d)(2)(C)
3 that Mr. Lee was the chief financial officer of GWG; is that
4 correct?

5 MR. CALLAHAN: Yes.

6 THE COURT: And your claim is that it would not be
7 admissible under 801(d)(2)(C)?

8 MR. CALLAHAN: I don't believe that his action in
9 disclosing those spreadsheets that he prepared that morning or
10 the night before would be part of his authorized duties.

11 THE COURT: Okay. And the Government wish to
12 respond?

13 MR. PAETTY: Yes, Your Honor. Regarding the 801
14 sections that you talked about, regarding (c), there is some
15 evidence, and with the passage of time it is possible that
16 these were not, and there can be some dispute on whether or not
17 the defendant authorized those statements to be made. There is
18 evidence of a meeting that occurred between Imperial and was
19 the defendant's -- Grand Wilshire Group's main lender at that
20 point, the defendant and Bruce Lee, which at that meeting
21 Imperial said, "We would like to see these -- we want to see a
22 full accounting measure of fronted payments of double-pledged
23 contracts," and then there was an agreement at that meeting to
24 provide that information.

25 There's some evidence in the record that the defendant

1 backtracked on that and then said, "Don't provide it to Bruce
2 Lee," and then Bruce Lee went ahead to do so. That could
3 conceivably cut against 801(d)(2)(C). However, under (d)(2)(B)
4 and (d)(2)(E), these records would still be admissible.

5 As Your Honor noted, Mr. Lee was the chief financial
6 officer of defendant's company. It was -- he was at that point
7 acting in the interest of the company to keep these loans -- to
8 keep this relationship with the bank alive. There is evidence
9 of meetings with the bank post delivery of those statements
10 to basically, in which defendant -- and there's a video of the
11 meeting in which the defendant essentially centralized and took
12 steps to basically save the relationship with the bank.

13 At that point when Bruce Lee provided these documents, it
14 was under -- it was with the expectation that this relationship
15 and the company could be saved. And by "the company," I mean
16 Grand Wilshire. So they were continuing on in this
17 relationship, but he was acting at that time as the CFO in the
18 interest of the company to keep the line of credit open with
19 Imperial. That's regarding (d)(2)(D). And again, the same
20 facts would be operative for the co-conspirator's statement and
21 the conspiracy of keeping alive these lines of credit, to keep
22 the lifeline of Grand Wilshire intact at that point, those
23 statements were made in furtherance of that goal.

24 THE COURT: Okay. So -- and then in reference to
25 the claim that they are business records, do you maintain that

1 claim?

2 MR. PAETTY: Yes, Your Honor. And I think as an
3 alternative ground, there is a business record. This is under
4 the *Cattle Brand* case that the Government cited in its brief,
5 and also the comments to 8036, this is a data compilation.
6 Now, that data compilation is based upon records that were
7 kept -- and by "the records" I mean the individual fronted
8 payments, the duplicated V.I.N.s.

9 These were all records that were kept in the company's
10 records as a regular course of business. They needed to keep
11 track of these fronted payments. They needed to keep track of
12 which banks had these -- had the cars pledged to them as
13 collateral. So the aggregation of that information and the
14 compilation that Bruce Lee -- that Bruce Lee provided is -- it
15 is essentially a data compilation of these underlying records
16 that were kept in the course of business, and that would
17 qualify under 8036.

18 THE COURT: Okay. And then in the -- in your
19 pleading I believe you indicated that the Government would not
20 be offering the records under 1006, but in the trial brief
21 there seems to be a suggestion to that otherwise. What is your
22 position regarding 1006?

23 MR. PAETTY: It's regards to these compilations that
24 Bruce Lee provided, that is correct, we would not be proceeding
25 on 1006. There would be some other summary charge that the

1 Government would provide at trial which would address different
2 issues that go specifically to the counts.

3 MR. CALLAHAN: A brief response, Your Honor?

4 THE COURT: Yes.

5 MR. CALLAHAN: Thank you. Just for brief points in
6 response to Mr. Paetty. The argument that Bruce Lee was acting
7 to save the company in providing these spreadsheets to
8 Mr. Mercer of Imperial Savings is belied a bit by some comments
9 that Mr. Lee made, basically saying, "I've got to cover my
10 ass," and he told that to an employee, and this was part of his
11 gesture. He was already in the communications -- cooperation
12 mode at this point. So this was a self-serving act. This was
13 not to save or help the company, as far as the evidence shows.

14 As far as being authorized by his position and on behalf
15 of Mr. Reodica, it's important to note that these documents
16 were provided surreptitiously off the site of the meeting at
17 the request of Mr. Lee so he could provide these in private to
18 Mr. Mercer. They were also prepared by Mr. Lee, who was a
19 computer expert and also the number one fraudster alleged in
20 this case outside of the allegations against Mr. Reodica. So
21 there is some question, as I put regarding business records, as
22 to the authenticity of these records and whether they should in
23 any way be relied on.

24 THE COURT: But those -- the issues you raised seem
25 to go to the question of the weight the jury should give them

1 and not whether they should be admissible if they meet the
2 requirements of the evidence, the hearsay exceptions.

3 MR. CALLAHAN: All right. Well, as far as business
4 records, let me say something that I didn't say the first time
5 because we really didn't discuss the records at that point. I
6 do not find any similar records in discovery that mirror
7 anything that Bruce Lee provided to Frank Mercer. These were
8 separately created by Mr. Lee. So these themselves aren't
9 business records.

10 If the data underlying these spreadsheets is found to be
11 business records, it becomes a more difficult argument, but
12 again, I go to the fact that this was prepared by the chief
13 cooperator in this case, an admitted fraudster. And we don't
14 have any, as far as I know, or most of the underlying records
15 that back up these charts. So I just think for that reason it
16 should not be admissible under 8036.

17 THE COURT: Okay. And I think that may go to the
18 weight and not to the admissibility. So it would appear that
19 the records -- assuming the foundation is laid, it would appear
20 that the records should be received or would be received under
21 the business records exception to the hearsay rule 8036. If
22 the foundation is laid, it would appear also that the records
23 may be admissible under 801(d)(2)(C) and 801(d)(2)(ii) and
24 other portions of 801(d). But I think it remains to be seen
25 whether the Government can lay the foundation.

1 So the tentative would be to deny the motion without
2 prejudice, to again renew if the foundation is not laid.

3 So the next motion at issue is the motion in limine to
4 preclude cross-examination regarding defendant's business
5 activities in Australia. And as I understand it, based on the
6 information that has been provided to the Court, Mr. Reodica
7 left the United States sometime in -- well, in 1988, and he
8 apparently moved to the Philippines.

9 And there's a dispute as to why he left the United States.
10 I think the Government claims he fled, and the defendant is
11 taking the position that he was looking for financing to revive
12 his company and looking for other sources of revenue.

13 That is, I think, an issue for the trier of fact to
14 resolve. But apparently he lived in Australia commencing
15 sometime -- or moved to Australia commencing sometime in 1990,
16 and then he lived in Australia, I think, as a citizen or
17 permanent resident up until 2012 when he was arrested, when he
18 flew from Australia to the United States attempting to attend a
19 wedding in Canada, and he was arrested in LAX.

20 So the Government has made it clear that the issues
21 regarding Mr. Reodica's business activities in Australia would
22 not be the subject of information provided to the jury in the
23 Government's case in chief. However, if the defendant has,
24 through counsel, has suggested that he would be testifying, and
25 the Government has indicated that if Mr. Reodica testifies,

1 that they intend to cross-examine him on the activities in
2 Australia if he testifies.

3 In reference to the activities in Australia that the
4 Government has focused on, there's two basic types of activity:
5 First, there's allegations that while he was in Australia, he
6 solicited investments in real estate that was allegedly
7 overvalued, and then he allegedly charged double interest and
8 used the investment funds for his own personal use to
9 defraud -- to allegedly defraud the investors.

10 And then the second type of claim is that he prepared
11 individual income tax returns on behalf of third parties, and
12 then used the income tax refunds for his personal use, and in
13 that aspect, defrauded clients who utilized his services as an
14 income tax preparer.

15 So Mr. Callahan has -- would be objecting to this
16 information being inquired of on cross-examination under 608(b)
17 and then 403 and then 404(b). So 608, I think, makes it clear
18 that specific instances of a witness' conduct to attack or
19 support the witness' character for truthfulness is prohibited
20 under 608 -- 608.

21 There is an exception, and that is if the witness
22 testifies, then 608 makes it clear under 608(b), makes it clear
23 that counsel may cross-examine that witness on issues having to
24 do with credibility and truthfulness. And counsel believes
25 that this is -- counsel for the Government believes that this

1 is an area of proper cross-examination under 608(b). There is
2 an issue regarding 403, and then an issue regarding 404(b).

3 We have to get to the issue of Mr. Reodica testifying.
4 Mr. Reodica -- if Mr. Reodica testifies, Mr. Reodica -- then
5 the Government is going to --

6 Before you'll testify, the Court will take a formal waiver
7 from you. But before you testify, you have to understand that
8 the Government will be able to ask questions -- any question
9 reasonably related to any of the testimony that you provide
10 here in court. So to the extent that you take the position
11 that you were on your best behavior and an upstanding citizen
12 in the Philippines or in Australia, if you bring that out
13 yourself in your direct examination, then the Government is
14 going to be able to ask any question related to your testimony
15 here in court.

16 So you have to be very careful. And this gets back to the
17 issue of self-representation. You'll need guidance here if you
18 so testify. But in any event, if you testify in this area, the
19 Government is going to be able to cross-examine you on any of
20 your affirmative testimony.

21 And then in terms of the issue regarding your activities
22 in Australia, let me hear further from the Government.

23 If he doesn't put that issue affirmatively before the
24 jury, that he was an upstanding citizen in Australia, then let
25 me hear the Government regarding the 403 concerns.

1 MR. PAETTY: Yes, Your Honor. Specifically with
2 608(b), these would go to statements that go to -- and
3 activities that would go to the defendant's truthfulness, or in
4 this case, untruthfulness regarding, as Your Honor mentioned,
5 soliciting real estate investments, then with tax refunds for
6 personal use. There were alleged instances of
7 misrepresentations there regarding representing as an
8 accredited tax preparer, and also payments of property taxes
9 that were supposed to be made, and ultimately were not, on
10 behalf of clients.

11 Now, as for the 403 discussion, Your Honor, as the Court
12 is aware the probative value has to be substantially outweighed
13 by the prejudice. And here we would say that factoring in the
14 nature of these misrepresentations that go to the defendant's
15 credibility were he to testify, that the more contemporaneous
16 nature of that from today from what he would be testifying, the
17 fact that these are not allegations that were from 20 years
18 ago, these are allegations over the last 10 years of his time
19 in Australia, so that they would be probative of the
20 defendant's truthfulness, or lack thereof, and in that regard,
21 would pass the 403 analysis.

22 THE COURT: You raised another issue that I should
23 have raised, and that's the issue of the timeliness. The
24 defendant has taken a position that the activities in Australia
25 are too remote in time in reference to the activities regarding

1 the alleged bank fraud and false statements on loan documents.

2 I think that is true, but as counsel for the Government has
3 pointed out, they're current in reference to his -- if he
4 testifies it should be current in reference to his testimony
5 here in court and his credibility in court, again, credibility
6 to be determined by the jury.

7 So in reference to the claim that it's too remote, the
8 Court would -- is persuaded by the Government's argument that
9 they're not because they are current in reference to his
10 testimony, and his credibility at the time he testifies is what
11 the jury has to analyze and take into consideration.

12 So I think the case law is clear, that if the defendant
13 decides to testify, he puts his credibility up front and for
14 the jury to consider, then these types of questions in this
15 area of questioning would be proper for the Government. And
16 again, how much the Government is going to be able to go into
17 in reference to this area and the number of questions and the
18 nature of the allegations that occurred in Australia would have
19 to be carefully looked at at the time that the Government asks
20 these questions. But the defendant should be aware that if he
21 testifies, then the Court is going to allow cross-examination
22 regarding credibility.

23 So I would like an offer of proof from the Government as
24 to what the types of questions in a little bit more -- with
25 more specificity, the nature and types of questions that you

1 intend to ask if he testifies.

2 MR. PAETTY: It would go, Your Honor, generally to
3 the categories that you have described: Regarding the types of
4 fraud; regarding tax preparation; regarding investments that
5 were -- that were then presented to his clients as a tax
6 preparer; regarding representations that were made by him,
7 again, in his role as a tax preparer, that certain things would
8 be taken care of and paid for and were not; and also the use of
9 the refunds for his personal use and placing them and moving
10 funds to different accounts for his own personal use, as
11 opposed to client accounts.

12 THE COURT: And you wouldn't be offering any
13 extrinsic evidence on this?

14 MR. PAETTY: One moment, Your Honor.

15 THE COURT: Yes.

16 (Discussion off the record.)

17 MR. PAETTY: Your Honor, generally that would not be
18 the case. The Government would not be seeking to admit that.
19 However, there are certain documents that could potentially
20 conclude defendant's signature where, depending on the context,
21 depending on how defendant's testimony, that could potentially
22 be put at issue. And, therefore, the Government would possibly
23 introduce those. But generally speaking, that would not be the
24 case.

25 THE COURT: Mr. Callahan?

1 MR. CALLAHAN: Thank you, Your Honor. Just so I am
2 clear, I understood you in the beginning to say -- I understood
3 you in the beginning to indicate to Mr. Reodica directly that
4 if he testifies and talks about that he was a Boy Scout in
5 Australia, that the Government can cross-examine. I don't
6 disagree with that principle, but as your colloquy ended just a
7 few moments ago, I got the impression now that even if he
8 doesn't mention Boy Scoutness, that the Government is going to
9 be able to cross-examine him on Australian facts.

10 THE COURT: I think generally -- generally, yes.
11 Again, credibility is a central issue for the jury to decide.
12 The case law is clear, if the defendant testifies, he places
13 his or her credibility right before the jury. And questions
14 regarding credibility are proper areas of cross-examination by
15 the Government.

16 So the response would be yes, but I hesitate a little bit
17 because it may come down to what testimony he will provide on
18 direct. If it's extremely limited, then the Court is going to
19 always use its discretion if it's extremely limited. So I am
20 not sure what he will testify to, what he will say, the areas
21 of his testimony. But if he talks about his history with the
22 company, what he did, why he did it, representations how he ran
23 his business, then all of this would be -- then the Government
24 would be able to question him on that.

25 MR. CALLAHAN: I understand that. For the Court's

1 edification, at this juncture, I intend to stay about six
2 continents away from Australia as long as I am still counsel of
3 record.

4 One final point on this, just as a general principle, we
5 have four charged schemes in this case, and they are separate,
6 and they have different witnesses, and the Government admits
7 that. It's a very large and broad and complicated case as a
8 result. The Court hasn't ruled on the other requests about
9 extrinsic evidence, which has three other programs that the
10 Government would like to be able to introduce either on direct
11 or cross.

12 My pragmatic argument is, one, these are not criminally
13 charged. He did not defend them because he got arrested. So
14 these are defaults in a civil case. And the overriding
15 factor -- the umbrella argument is we have four, five, six,
16 seven schemes. This one, the Government can introduce
17 extrinsic evidence about under Rule 608(b). So it opens up a
18 can of worms that no one can really close. They've got more
19 than ample subject matter to cross-examine Mr. Reodica if he
20 does testify. They don't need eight. And for that reason, I
21 think it should be excluded unless he opens the door to it.

22 THE COURT: Well, again, I think I've indicated that
23 if he testifies and if he places his credibility before the
24 jury, the Government is going to be able to cross-examine him
25 regarding his statements to the jury and also on areas that

1 test his veracity and his credibility or go to issues involving
2 veracity and credibility, and that would include matters
3 involving his activities in Australia.

4 And again, that's all subject to further consideration
5 depending on his testimony and the Government's questions and
6 the number of questions that the Government has in this area.

7 So we go to the next motion, and that's a motion to
8 preclude the defendant's -- what defendant claims to be
9 protected statements made to a corporate counselor or counsel
10 for GWG. And the defendant has taken the position that the
11 statements made to the lawyer for the corporation are protected
12 by the attorney-client privilege.

13 The Government's position here is that it's the
14 defendant's burden to establish the application of the
15 privilege. The tests articulated by the Government, as
16 reflected in *Upjohn* and also in *Belleville*, I think are the
17 factors that the Court has to consider in reference to whether
18 a person has met the burden regarding the application of the
19 attorney-client privilege.

20 That being said, this area of attorney-client privilege is
21 difficult for the Court to rule on without having full
22 opportunity to understand precisely the information or the
23 discussions that the defendant had with the lawyer, his
24 understanding of the nature of those communications, his
25 understanding of the relationship. And the Court is generally

1 going to sustain the objection unless the defendant places the
2 issue of advice of counsel before the jury.

3 And if that issue is placed before the jury, then this --
4 then the attorney-client privilege would be waived, and the
5 Government would be able to go into this area. So I think we
6 are going to need some, at some point in time, additional
7 information from counsel for Mr. Reodica or Mr. Reodica as to
8 whether this is a defense he intends to pursue at trial.

9 If it's an advice-of-counsel defense then the Government
10 is allowed to cross-examine. If there is no advice-of-counsel
11 defense, then the Government is going to be -- the Court will
12 probably sustain the objections. That's all I can say now. I
13 think it's premature to formally rule.

14 The next motion has to do with a motion in limine to
15 preclude introduction of extrinsic act evidence. And so
16 there's two parts to the defendant's motion: One is a motion
17 to preclude evidence regarding the Visa credit card program, to
18 preclude evidence regarding falsification of TRWs or credit
19 reports; and then the next is to preclude evidence regarding
20 the Commercial Paper Program.

21 And from what I understand from the pleadings, the Visa
22 credit card program involved GWG employees who were able to
23 obtain Visa credit cards from Imperial Savings, and then the
24 employees would receive cash advances from the credit cards and
25 then use the cash advances to invest in GWG.

1 And then in reference to the alleged falsification of TRWs
2 or credit reports, there's the allegation that the defendant
3 caused falsification and submission of reports to lender banks
4 so that the defendant would be able -- or the company would be
5 able to sell more cars to the -- generally, which would
6 increase revenues on the books and then allow for additional
7 funding by the lenders and additional credit by the lenders.

8 And then the third category has to do with the Commercial
9 Paperwork Program. And under that program, as I understand it,
10 persons or friends or associates of GWG would be allowed to
11 invest in the company in exchange for short-term promissory
12 notes. And this was used to, again, to increase revenues.

13 I think the Government's claim here is that these schemes
14 were used to artificially inflate the revenues of GWG. The
15 inflation of the revenues, artificially inflated revenues,
16 would result in additional loans being made by the lenders to
17 GWG, which would allow the company to expand or increase in
18 size and growth.

19 And it's the claim of the Government that Mr. Reodica
20 wanted his company to become the largest vehicle, I guess,
21 vehicle sales company in the world. And at the time it was the
22 third largest in the United States and the second largest Chevy
23 dealership in the United States, and his goal was to make it,
24 by any measure, the largest in the world. And these programs
25 were devised and designed to achieve artificial inflation of

1 revenues to accomplish all of this.

2 So the motion to exclude is based on 404(b) and then 403.
3 And the Government has articulated that this evidence should be
4 admissible because it's inextricably intertwined with the
5 scheme to defraud, and they need to tell a coherent story. And
6 the evidence is also admissible under 404(b) in that it's
7 evidence that goes to the issue of motive, opportunity, intent,
8 plan, identity, absence of mistake or accident.

9 So let me hear from -- do you wish to make reference to
10 this in the Government's case in chief?

11 MS. KUMAR: Yes, Your Honor. We believe it's
12 inextricably intertwined exactly as the court articulated, for
13 the reasons the Court articulated, and we also believe that,
14 alternatively, it's admissible under 404(b). Looking at the
15 inextricably intertwined analysis, the Government would cite
16 back to *Soliman*, which it cited in its brief, where the Ninth
17 Circuit affirmed where it was inextricably intertwined because
18 the conduct of the defendant's employees three years before his
19 charged crime was inextricably intertwined because the
20 Defendant supervised the employees. The schemes were similar,
21 and the time space between the two frauds was limited.

22 Also to *Rutherford*, which says that while not all bad acts
23 occurring within the time frame of a conspiracy are
24 automatically admissible, the fact that the acts occurred with
25 a witness co-conspirator during the time of the conspiracy

1 weighs heavily towards finding the acts intertwined.

2 Here we have the defendant orchestrating all of these
3 schemes, directing these schemes with the same employees all
4 within the same time period. The Government would submit that
5 they are inextricably intertwined. To respond to the
6 defendant's argument in the reprise, he indicates that they are
7 not part of the indictment because there is no fraud against
8 the lender.

9 As the Court pointed out, actually the Visa program was
10 from Imperial. There are letters from Imperial indicating that
11 they believe that the defendant was misrepresenting facts to
12 them because the credit cards were supposed to be issued to VIP
13 customers and not to employees, and they had no idea that it
14 was going to be operating capital.

15 But more importantly, Your Honor, it just goes, as the
16 Court articulated, his goal, the defendant talks about how that
17 goal isn't criminal, but the goal doesn't need to be criminal,
18 Your Honor. The acts that he did to further himself towards
19 that goal have to be criminal, and that's what sort of guides
20 these together. And the question is whether they are
21 connected. And that goal is a goal that the defendant -- and
22 very strong goal of the defendant -- you know, puts these
23 together.

24 The defendant cites to the speedy trial stipulation in
25 which the Government and defendant agree to language that says

1 that these are like they are separate crimes. The Government
2 would submit that that is merely definitive as if they were
3 separate crimes when, really, they are one course of conduct,
4 which is exactly what the defendant -- what the Government has
5 to prove at trial, that this was a deliberate plan or scheme
6 and a course of conduct to defraud the banks.

7 Alternatively to 404(b), the Government anticipates a
8 large part of the defense is that the defendant did not intend
9 to deceive anyone, and that his CFO, Bruce Lee, was really the
10 orchestrator behind all of this, the fact that he was directing
11 these other programs for the same goals, for the same purposes
12 and asking his employees to falsify credit reports to the banks
13 and to give him operating capital, all go back to the same
14 point and go to his motive, his intent and his knowledge of the
15 schemes.

16 THE COURT: Mr. Callahan, do you have any response?

17 MR. CALLAHAN: Your Honor, the Commercial Paper
18 Program was not charged in this case because it didn't fit the
19 theory of the Government's indictment, which was defrauding
20 lenders out of funds by virtue of misrepresentations. This
21 program was to raise money for operating capital to increase
22 the business. That is not a crime. That is a laudable motive.
23 I think that one particular aspect of the Government's motion
24 is the easiest to disregard.

25 As far as the Visa program goes, again, this does

1 indirectly impact the lenders. However, is it inextricably
2 intertwined with the underlying indictment and what the
3 Government is trying to prove? I still submit no. It is also
4 quite attenuated from the standpoint of proof, and it just --
5 once again, I have to go back and double-back to my earlier
6 argument about, you know, it's in a sense an argument about
7 piling on.

8 There is only so many things the jury is going to be able
9 to fathom in this case, and having four, five, six, seven
10 different areas they need to organize in their minds and
11 evaluate, just seems a little bit over the top. So I think
12 it's more prejudicial than probative in this case to allow this
13 extrinsic evidence to come in.

14 THE COURT: Why do you need the Commercial Paper
15 Program?

16 MS. KUMAR: Your Honor, well, the defendant seems to
17 think the theory of the Government, because we charge bank
18 fraud, it doesn't mean that it's not inextricably intertwined,
19 as the Government pointed out. But the Commercial Paper
20 Program was another way for the defendant to raise lots of
21 money for the company. He solicited money from many different
22 people, including his employees. He pressured them to invest
23 in the program, and he used that money to try to further his
24 goals and further the lines of credit.

25 So the Government believes, to tell a coherent story and

1 explain to the jury this really was his goal, and that this
2 really was what he was intending to do, not just necessarily
3 with three distinct parts of a scheme, but overall, and that
4 was his goal. We think that's important to make that clear.

5 And while just to be clear, the defendant -- defense
6 counsel pointed out that the CPP program doesn't fit the theory
7 of the Government. The Government would also just point out
8 the TRW reports were in the indictment and were only redacted
9 due to the passage of time, so they clearly fit the theory of
10 the Government.

11 And so on those grounds, Your Honor, the Government
12 believes that this fits into the story of this particular
13 defendant and his particular unique and strong desire to
14 increase the operating capital so that his dealership would be
15 number one.

16 THE COURT: Again, the rules are always subject to
17 change or modification depending on what happens at trial, but
18 the Court would conclude that the Government has been able to
19 establish that the three categories, the Visa card program, the
20 alleged falsification of TRWs and the Commercial Paper Program
21 are intertwined with the story that the Government intends to
22 tell the jury here, and that is that the defendant's goal was
23 to, in various ways, artificially and other ways, but
24 artificially to place on the books revenues that would cause
25 lenders to provide additional loans and lines of credit to the

1 company to increase the size of the company, and that's the
2 theme and story of the Government.

3 So the Court would conclude that the Government has been
4 able to establish that it's inextricably -- that it's
5 intertwined, and that it's also admissible for the other
6 reasons articulated under -- for intent and to show absence of
7 mistake and fraud. So I am going to allow that.

8 The last category of evidence has to do with his --
9 evidence of the defendant's property transfers at or near the
10 time he left the United States, and then the evidence regarding
11 a bank account that he had his secretary open up in her name
12 for his control. And the defendant has objected to this
13 category -- or these categories of evidence based also on 403
14 and relevance.

15 I have concerns regarding these categories of evidence
16 here. The evidence regarding the alleged bank account that
17 T.D. opened up on behalf of the defendant is not consistent
18 with the theme or theory here that -- and the story that the
19 Government is going to be telling the jury, and that is that he
20 artificially increased on the books revenue to acquire
21 additional lines of credit. That is seemingly inconsistent
22 with that theory because he is taking from the revenues of the
23 company and placing it for his own personal use.

24 It's arguably extremely prejudicial because it's a
25 separate -- it appears to be a scheme to defraud the company

1 itself, his own company, or the investors for the company, and
2 separate and apart from the fraud that the Government has pled
3 in the indictment.

4 In reference to the transfers of property involving the
5 divorce, if we get into those issues, and the defendant should
6 be able to explain all of the matters involved in the divorce,
7 and that is going to involve a mini trial. It will be
8 time-consuming. And issues of divorce and dissolution and
9 acrimony that goes with it can be extremely prejudicial to a
10 defendant in a criminal case. So unless the Government has a
11 good reason to get into this area, I think you are piling on.

12 MS. KUMAR: Very well, Your Honor. The only thing
13 that I would request, Your Honor, if the defendant, as the
14 Court already indicated, testifies on direct that he was
15 fleeing to raise money and maybe fleeing because he felt like
16 he was threatened, the Government would submit that if the
17 Government were to cross-examine him on the fact that he quit-
18 claims six properties to his then wife within weeks of fleeing,
19 and that he never had an intention of coming back and knew that
20 he was fleeing at the time he did so. So the Government
21 understands the Court's position and still subsists in its
22 motion, but would ask the Court, if he testifies as such on
23 direct, whether the Government would have the ability to
24 cross-examine him along those lines.

25 THE COURT: I'm still inclined to preclude it,

1 because I think if the defendant testifies, he is going to tell
2 the jury that he had an intention of coming back, but at the
3 same time, he is going through a divorce or a dissolution and
4 there is a transfer of properties, and in order to get into all
5 of that, it's going to be time-consuming. And the issue of
6 divorce and other issues that could be disclosed to the jury
7 concerning the divorce could be very prejudicial. And family
8 law issues are generally emotional and have the potential to
9 cause prejudice to the defendant.

10 MS. KUMAR: Very well, Your Honor.

11 THE COURT: So I'm inclined not to allow the
12 Government. That being said, if something unexpected happens,
13 you can always make the request to get into this area.

14 So I think that concludes ruling on all of the motions.
15 We have the issue of the defendant's arraignment.

16 He can remain there. He can feel comfortable remaining
17 there.

18 So the Government has filed, I guess, an indictment
19 that -- the initial indictment, I think, alleged or pled
20 50-something counts of fraud and false statements. The
21 Government's new indictment has greatly reduced the number of
22 allegations or counts. That was filed on September 18th, 2015.

23 Is that correct? Am I correct on the date of filing?

24 MS. PINKEL: Yes, Your Honor.

25 THE COURT: And so the indictment now charges a

1 violation of Title 18 U.S. Code Section 1344, scheme to defraud
2 bank and savings and loan association; and then Title 18 U.S.C.
3 Section 1014, false statements and application for credit;
4 Title 18 U.S. Code Section 2, causing an act to be done and
5 aiding and abetting.

6 The indictment that was filed on September 18th, 2015 is
7 an indictment consisting of -- let's see. It looks like 60 --
8 well, is it 64 pages? I'm missing page 64, but I see page 65.

9 MS. KUMAR: It's -- yes, because Exhibit B to our
10 filing, Your Honor, takes out whatever was redacted. So 64 has
11 Count 51. And so because it was removed, the page numbers
12 changed. We didn't want to change the pagination or otherwise
13 fiddle with the original indictment. But Exhibit A to our
14 filing puts a box around whatever was redacted, for the Court's
15 convenience.

16 THE COURT: And then so the record should reflect
17 before the start of this morning's proceedings, Mr. Reodica had
18 an opportunity to meet with counsel, Mr. Callahan, to review
19 the redacted indictment filed the 15th of September.

20 Mr. Reodica, did you have an opportunity to review that
21 document?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And did you have an opportunity to
24 discuss the contents of that document with your -- the
25 indictment with your counsel?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And do you understand the allegations
3 contained therein? You understand the allegations contained
4 therein?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you have any questions of the Court
7 or your counsel regarding the allegations contained in the
8 indictment? Do you have any questions of the Court regarding
9 the allegations contained in the indictment?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Yes?

12 MS. PINKEL: Your Honor, may I have a moment with
13 counsel?

14 THE COURT: Yes.

15 (Discussion off the record.)

16 MS. PINKEL: Your Honor, I apologize for
17 interrupting. Apparently the issue that Mr. Callahan brought
18 to me this morning, I think before he and I were on the case,
19 the defendant had never been given an opportunity in magistrate
20 court to give his plea of guilty/not guilty on the original
21 indictment, which was returned in 1994. I believe it's because
22 at the time the case was assigned to Judge Feess, and he
23 normally takes those. And then Judge Feess had to recuse
24 himself before the defendant actually officially appeared in
25 front of him.

1 So I think the concern is we think it's just a technical
2 issue; it's not a fatal issue, but the defendant should have an
3 opportunity to plead guilty or not guilty to the original
4 indictment, which was returned in 1994.

5 THE COURT: So the original indictment included --
6 was it 51 counts?

7 MS. PINKEL: Yes, Your Honor.

8 THE COURT: Mr. Reodica, I'm assuming that you had
9 an opportunity to review the original indictment.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And you discussed the contents of that
12 indictment with your counsel?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And do you have any questions of counsel
15 or the Court regarding the allegations contained in the
16 indictment?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: No?

19 THE DEFENDANT: No.

20 THE COURT: And does counsel waive additional formal
21 reading and additional arraignment?

22 MR. CALLAHAN: I do waive.

23 THE COURT: And then you wish to enter a not guilty
24 plea to that initial indictment; is that correct?

25 THE DEFENDANT: Yes, Your Honor, not guilty.

1 THE COURT: And then in reference to the redacted
2 indictment, it's also not guilty?

3 THE DEFENDANT: Not guilty, Your Honor.

4 THE COURT: And is there a waiver of formal reading
5 and arraignment on the redacted indictment? Do you want me to
6 read it to you?

7 THE DEFENDANT: No, Your Honor. That's okay, sir.

8 THE COURT: And you're entering a not guilty plea?

9 THE DEFENDANT: My answer is --

10 THE COURT: You're not guilty on the redacted
11 indictment?

12 THE DEFENDANT: Not guilty, yes.

13 THE COURT: Anything further?

14 MS. PINKEL: No, Your Honor. Thank you.

15 THE COURT: Okay. Now, Mr. Reodica, on Monday I'm
16 going to bring you back, and you are going to have an
17 opportunity to pursue your request to represent yourself. And
18 I'm going to go through a number of questions I am going to ask
19 of you. The Government should be prepared to inform you of all
20 of the consequences that could occur should you be found guilty
21 by a jury. You have to carefully consider whether you want to
22 represent yourself.

23 You have a very skilled lawyer, former U.S. attorney, who
24 was defense counsel on a number of cases involving very complex
25 matters. You have a right to waive counsel and represent

1 yourself. Generally if you do that, you're making a big
2 mistake. But if at the conclusion of Monday's hearing I make a
3 determination that you have intelligently waived your rights to
4 have counsel represent you, I am going to allow you to
5 represent yourself with the understanding that we are going to
6 start trial on Tuesday. So keep that in mind, and think about
7 that over the weekend.

8 THE DEFENDANT: Thank you, Your Honor. I will
9 consider them quite possibly.

10 MR. CALLAHAN: One last thing, Your Honor. Forgive
11 me.

12 THE COURT: Yes.

13 MR. CALLAHAN: With respect to the arraignment, I
14 brought it to the Court's attention, I don't want it to be
15 perceived as waiving any additional rights that Mr. Reodica may
16 have down the line to challenge the delay in the arraignment.
17 So I just want to put that on the record.

18 THE COURT: I think that's clear. Okay. Thank you.

19 MR. PAETTY: Your Honor, briefly, one housekeeping
20 matter regarding the Court's schedule. It is in the court's
21 standing order, we understand, that trial is five days a week,
22 Monday through Friday. There is a preexisting conflict on
23 October 22nd and 23rd that I have, and I was wondering --

24 THE COURT: We are not going to be in trial October
25 22nd and October 23rd. Let me just say that the Government's

1 estimate of this case is seemingly exceedingly long. I
2 recognize you have 29 witnesses. About three weeks ago I just
3 completed another trial involving a complex money laundering
4 drug conspiracy claim or count.

5 We started it on Tuesday. We finished it on Friday, and I
6 let the defendant -- and that included argument and jury
7 instruction, and we ended early on Friday so the defendant
8 could attend services back at the MDC. So we had 22 witnesses
9 there. Same situation, the defendant would not stipulate to
10 any of the underlying documents, and we moved very quickly. So
11 I am expecting the Government to move very quickly in this
12 case, a lot quicker than ten days to present your case in
13 chief.

14 So I am going to prod you along and move you along in
15 front of the jury, and I would hope that the case could be
16 tried in far less time than the Government's estimate. And I
17 don't see a conflict on the 22nd or 23rd. If there is, we will
18 be in trial.

19 MR. PAETTY: Thank you, Your Honor.

20 THE COURT: Mr. Callahan, what's your estimate?

21 MR. CALLAHAN: For the defense case?

22 THE COURT: Based on what you know of the
23 Government's case in chief, what do you --

24 MR. CALLAHAN: I don't -- to be honest with the
25 Court, I find that under the circumstances with the number of

1 witnesses and the different themes involved, it's not an
2 unreasonable estimate, compounded by something I just came face
3 to face with yesterday, which was a deposition of one of the
4 employee witnesses. And I have a feeling that all of the --
5 most of the employees at the company will have some degree of
6 language issue. They do speak English, but in many cases,
7 including Mr. Reodica's, it's not his native language. So
8 yesterday was extremely slow-moving. So I just wanted to
9 advise the Court, and I'm sure the Government agrees, that
10 could be an issue.

11 THE COURT: Well, then, we will have to deal with
12 that at the time. And you should have interpreters in case we
13 need interpreters for the witnesses. And I would encourage
14 counsel just to shorten the number of questions, reduce the
15 number of questions that you would ask the witnesses. I don't
16 see it as complex as maybe the lawyers do, and we will just
17 have to see how it plays out at trial.

18 That's it. Let's return -- Mr. Reodica is ordered to be
19 back here with Mr. Callahan on Monday.

20 THE COURTROOM DEPUTY: We have several 9:00 matters.
21 Maybe 10:00?

22 THE COURT: 10:30?

23 MR. CALLAHAN: That's fine.

24 THE COURT: 10:30.

25 MR. CALLAHAN: Thank you very much, Your Honor, for

1 your time.

2 MS. KUMAR: Thank you, Your Honor.

3 MR. PAETTY: Thank you.

4 (Proceedings concluded at 12:50 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

3 COUNTY OF LOS ANGELES)
4 STATE OF CALIFORNIA)

6 I, CAROL JEAN ZURBORG, Federal Official Realtime
7 Court Reporter, in and for the United States District Court for
8 the Central District of California, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code that the
10 foregoing is a true and correct transcript of the
11 stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page format is in
13 conformance with the regulations of the judicial conference of
14 the United States.

16 Date: May 19, 2016

/s/ CAROL JEAN ZURBORG

CAROL JEAN ZURBORG, CSR NO. 7921, CCRR
Federal Official Court Reporter

EXHIBIT 5

(10/5/2015
TRANSCRIPT)

12 REPORTER'S TRANSCRIPT OF PROCEEDING
MONDAY, OCTOBER 5, 2015
13 10:45 A.M.
LOS ANGELES, CALIFORNIA

23 CAROL JEAN ZURBORG, CSR NO. 7921, CCRR
24 FEDERAL OFFICIAL COURT REPORTER
25 312 NORTH SPRING STREET, ROOM 414
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 (213) 894-3539

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21 ALSO PRESENT:

22 CHRISTINA L. GITS, Paralegal

23

24

25

1 | LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 5, 2015

2 | 10:45 A.M.

3 | --o0o--

4 THE COURTROOM DEPUTY: Calling item No. 6: Case
5 number CR 94-00121 SJO; United States of America versus
6 Eminiano A. Reodica, Jr.

7 Counsel, please state your appearances.

8 MS. KUMAR: Good afternoon, Your Honor. Poonam
9 Kumar, Ruth Pinkel and Scott Paetty for the United States.

10 THE COURT: Good morning.

11 MR. CALLAHAN: Good afternoon, Your Honor. Rick
12 Callahan on behalf of Eminiano Reodica, who is present, in
13 custody.

14 THE COURT: Okay. The matter was placed on today's
15 calendar for the Court to take a waiver of Mr. Reodica
16 concerning the issue of self-representation. And I have been
17 informed by the clerk that Mr. Reodica wishes to retain
18 Mr. Callahan as his counsel.

19 Mr. Reodica, is that your wish?

20 | THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. So we discussed I think last week
22 your right to represent yourself, and before the Court would
23 grant you that right, I would take the waivers that would --
24 wherein the Court would conclude, if appropriate, that the
25 waiver would be intelligently made, and then you could

1 represent yourself.

2 And you withdraw that request, that's correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And then I am informed that you wish to
5 enter a plea of some sort, and I'm not sure what precisely that
6 entails.

7 MR. CALLAHAN: Your Honor, there is no plea offer
8 currently pending. It is Mr. Reodica's desire, as he expressed
9 it to me this morning, to plead straight up to the remaining
10 charges, which I believe are 26. I would request, and I have
11 discussed this with Mr. Cruz and also Government counsel, if
12 the matter could be continued until 2:30 this afternoon so both
13 parties have time to prepare, and I can go over his rights with
14 him.

15 THE COURT: Okay. And then what's -- does the
16 Government have a position regarding acceptance of
17 responsibility? Has that been discussed with counsel for
18 Mr. Callahan?

19 MS. PINKEL: No, Your Honor, it has not. And I
20 would say under the circumstances the Government certainly
21 wouldn't be moving for the third point because so much effort
22 has been made to try to resolve this multiple times very long
23 ago in the past -- the most recently in March -- given how much
24 time it takes the Government to prepare this case. So we
25 certainly would not be moving for a third point.

1 THE COURT: Okay. So that whole issue will be
2 discussed if we get to the issue of sentencing.

3 Mr. Reodica, we have a special panel that has been called
4 in for tomorrow, so if you intend to pursue your plea, then I
5 am trying to accomplish that earlier this afternoon so that the
6 jury office can be advised of that. So we will bring you back
7 at --

8 Is it 2:00 or 2:30?

9 MR. CALLAHAN: 2:30, I believe, is for everybody's
10 schedule.

11 THE COURT: 2:30 this afternoon.

12 Do you have any questions, Mr. Reodica?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Okay. And so the matter will be
15 continued until 2:30 this afternoon.

16 MR. CALLAHAN: Thank you.

17 THE COURTROOM DEPUTY: Court's in recess.

18 (Recess taken from 10:49 a.m. to 2:55 p.m.)

19 THE COURTROOM DEPUTY: Recalling Item No. 6: Case
20 number CR 94-00121 SJO; United States of America versus
21 Eminiano A. Reodica, Jr.

22 Counsel, would you please state your appearances.

23 MS. KUMAR: Good afternoon, Your Honor. Poonam
24 Kumar on behalf of the United States.

25 MR. CALLAHAN: Good afternoon, Your Honor. Rick

1 Callahan on behalf of Mr. Reodica, who is present and in
2 custody.

3 THE COURT: Okay. The matter is here for a change
4 of plea. It was called this morning, and Mr. Reodica indicated
5 that he wished to proceed with Mr. Callahan representing him,
6 and that he wished to enter pleas of guilty to the counts in
7 the redacted indictment.

8 And what is the status?

9 MS. KUMAR: Your Honor, the Government is prepared
10 to go forward. We are just checking with our appellate
11 sections since defense counsel and Government counsel just
12 remembered that this is a pre- and post-guideline case; some of
13 the counts are pre, some of the counts are post, and some
14 straddle. So we are just checking with our appellate section
15 to see if there is anything in addition that the Court must do
16 to ensure that the plea is complete, the plea colloquy is
17 complete. So we would just ask for a few more minutes before
18 we go forward until Ms. Pinkel comes back down.

19 THE COURT: So how much time do you need?

20 MS. KUMAR: She is up there right now, Your Honor.
21 I would think no more than ten minutes.

22 THE COURT: And if your client feels more
23 comfortable, we can take the plea at counsel table.

24 MR. CALLAHAN: That's very kind of you.

25 THE COURT: It's up to you, Mr. Callahan.

1 MR. CALLAHAN: Thank you very much, Your Honor.

2 THE COURT: And then so you are talking about ten
3 minutes?

4 MS. KUMAR: Yes, ten minutes, Your Honor.

5 THE COURT: Okay. We are in recess.

6 THE COURTROOM DEPUTY: The Court is in recess.

7 (Recess taken from 2:57 p.m. to 3:58 p.m.)

8 THE COURTROOM DEPUTY: Recalling Item No. 6, case
9 number CR 94-00121 SJO; United States of America versus
10 Eminiano A. Reodica, Jr.

11 Counsel, please state your appearances.

12 MS. KUMAR: Good afternoon, again, Your Honor.

13 Poonam Kumar on behalf of the United States.

14 MR. CALLAHAN: Good afternoon, Your Honor. Rick
15 Callahan on behalf of Mr. Reodica. He is present, in custody.
16 He is also being assisted by a headset to hear the Court in the
17 colloquy.

18 THE COURT: Okay. Then, sir, why don't you have a
19 seat.

20 And maybe we can have him unhandcuffed.

21 So the matter is -- we continue with the taking of the
22 defendant's plea. And I understand it -- as I understand it,
23 the defendant will be entering pleas to Counts One, Two, Four,
24 Five, Six, Eighteen, Nineteen, Twenty, Twenty-Two, Twenty-Five,
25 Twenty-Six, Twenty-Seven, Twenty-Eight, Twenty-Nine,

1 Thirty-One, Thirty-Two, Thirty-Three, Thirty-Four, Thirty-Five,
2 Thirty-Six, Thirty-Seven, Thirty-Eight, Thirty-Nine and Forty,
3 Count Forty-Nine and Count Fifty.

4 Is that correct?

5 MS. KUMAR: Your Honor, I don't believe he is going
6 to be pleading guilty to Count Twenty-Eight. Twenty-Eight has
7 been redacted out of the indictment. So there should be --
8 otherwise the Court is correct, there should be a total of 26
9 counts.

10 THE COURT: Well, I haven't added them up.

11 MS. KUMAR: Okay.

12 THE COURT: But the clerk gave me a list of the
13 counts that he would be entering a plea to.

14 MS. KUMAR: Okay.

15 THE COURT: So all are correct, with the exception
16 of Twenty-Eight?

17 MS. KUMAR: That's right.

18 THE COURT: And then just for purposes of the
19 record, the clerk has informed me that we do not have a filed
20 stamped copy of the indictment.

21 MS. KUMAR: We can provide one to the Court.

22 THE COURT: Is that correct?

23 MS. KUMAR: The redacted indictment was filed by the
24 Government on September 18th, and we can provide a copy.

25 THE COURTROOM DEPUTY: We have a copy of the

1 redacted copy. We don't have a copy of the original complaint.

2 MS. KUMAR: Oh, the original. That is correct,
3 Your Honor, we don't have one in front of us.

4 THE COURT: So is there an issue that we need to
5 address in terms of the originally filed indictment, wherein we
6 do not have a filed stamped copy?

7 MS. PINKEL: Your Honor, I could go back up to our
8 office. I believe that we had a filed stamped copy somewhere
9 in the files, and I will go look for it.

10 THE COURT: Okay. Do we need it? That's the
11 question.

12 MS. PINKEL: No, no, Your Honor, we don't. I think
13 there's no disagreement. The indictment was filed.

14 MR. CALLAHAN: That's correct.

15 THE COURT: That's stipulated to?

16 MR. CALLAHAN: Yes.

17 THE COURT: And then the redacted indictment was
18 filed on the 18th of September; is that correct?

19 MS. KUMAR: Yes, Your Honor.

20 THE COURT: Mr. Reodica, can you hear me, sir?

21 THE DEFENDANT: Yes, very well.

22 THE COURT: Mr. Reodica, it's the Court's
23 understanding that you wish to enter pleas of guilty again to
24 Counts One, Two, Four, Five, Six, Eighteen, Nineteen, Twenty,
25 Twenty-Two, Twenty-Five, Twenty-Six, Twenty-Seven, Twenty-Nine,

1 Thirty-One, Thirty-Two, Thirty-Three, Thirty-Four, Thirty-Five,
2 Thirty-Six, Thirty-Seven, Thirty-Eight, Thirty-Nine, Forty,
3 Forty-Nine and Fifty, to those counts in the redacted
4 indictment filed on the 18th of September. Is that what you
5 wish to do, sir?

6 THE DEFENDANT: I will check with him.

7 (Counsel and defendant conferred off the record.)

8 THE COURT: Is that what you wish to do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. May I have the defendant sworn,
11 please.

12 THE COURTROOM DEPUTY: Yes.

13 THE COURT: Would you stand, sir.

14 THE COURTROOM DEPUTY: Sir, will you please raise
15 your right hand to be sworn.

16 **EMINIANO A. REODICA, JR., THE DEFENDANT, WAS SWORN**

17 THE DEFENDANT: I do.

18 THE COURTROOM DEPUTY: Thank you.

19 THE COURT: Sir, before the Court -- you may have a
20 seat, please.

21 Before the Court can accept your plea -- first of all, if
22 there's anything I say that you are not able to hear, please
23 immediately raise your hand.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Before the Court can accept your plea,

1 the Court must be satisfied that you have been informed of your
2 rights, that you understand your rights and the consequences of
3 your plea. In order to make sure that I am satisfied that you
4 understand everything, I am going to ask you questions and then
5 make certain statements. If I ask a question or make a
6 statement that's not clear to you, it's important that you
7 alert me so I can further explain.

8 If during the taking of your plea you would like an
9 opportunity to speak to your counsel in private, simply alert
10 the Court, and I can give you the opportunity, and you can
11 inquire of your attorney in private. That's outside the
12 presence of the Court and the Government.

13 Do you understand?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You have been placed under oath --

16 May I have the microphone brought closer, please.

17 You have been placed under oath, which means you have a
18 duty to answer my questions honestly and truthfully to the best
19 of your ability. If you fail to do that, you will be
20 prosecuted in a separate proceeding for making a false
21 statement.

22 Do you understand that consequence?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You have the right to remain silent,
25 which is your privilege against self-incrimination. By

1 entering your plea of guilty, you are giving up that right
2 because your plea of guilty incriminates you. By answering
3 questions I will be asking you, you could incriminate yourself.

4 Have you discussed with your counsel your right to remain
5 silent, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And do you understand that right?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And at this time do you freely,
10 voluntarily and expressly give up that right and agree that the
11 Court can continue taking your plea?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And does counsel join?

14 MR. CALLAHAN: I join, Your Honor.

15 THE COURT: May I have the rest of the file? I
16 don't have the other pleadings.

17 MR. CALLAHAN: Your Honor, is it appropriate for me
18 to stand next to --

19 THE COURT: Yes, wherever you're comfortable.

20 MR. CALLAHAN: Thank you.

21 THE COURT: Sir, let's start, do you speak any
22 language other than English?

23 THE DEFENDANT: Filipino, yes, sir, Filipino.

24 THE COURT: And do you prefer proceeding today in
25 English?

1 THE DEFENDANT: In English is okay, Your Honor.

2 THE COURT: Okay. If, again, there's anything I
3 state or say that you do not understand, please alert me.

4 Understood?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Would you provide your true and correct
7 full name, sir.

8 THE DEFENDANT: My name is Roberto Coscolluera, Jr.

9 That is my Australian name.

10 THE COURT: And would you spell that, your last name
11 that you have used in Australia.

12 THE DEFENDANT: C-o-s-c-o, double l, u-e-r-a.

13 THE COURT: And your first name you used in
14 Australia?

15 THE DEFENDANT: Roberto, R-o-b-e-r-t-o.

16 THE COURT: And what other names have you gone by?

17 THE DEFENDANT: Just that other name. The other
18 name is when I was here.

19 THE COURT: What name is that, sir.

20 THE DEFENDANT: Eminiano A. Reodica, Jr. That's
21 before I immigrated to Australia.

22 THE COURT: When you moved to Australia, you changed
23 your name; is that correct?

24 THE DEFENDANT: I changed my name before I went to
25 Australia, actually, and then I became an Australian under that

1 name.

2 THE COURT: At the time that you were in the United
3 States, the name that you used, the last name that you used was
4 Reodica?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Was that the name you were given when
7 you were born, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And what is your name -- what is your
10 age?

11 THE DEFENDANT: I was born in 1944, so I will be 72
12 in September 2016.

13 THE COURT: And how many years of school have you
14 completed?

15 THE DEFENDANT: I have finished up to -- let's see.
16 More than 16 years, so -- I went to university. I finish
17 accounting, plus I have a couple of years in master's study,
18 and I became a CPA in the Philippines.

19 THE COURT: So where did you attend university or
20 college?

21 THE DEFENDANT: What?

22 THE COURT: Where?

23 THE DEFENDANT: In Manila.

24 THE COURT: And your area of study was what?

25 THE DEFENDANT: Accounting and business.

1 THE COURT: And what's your date of birth? So you
2 were born September?

3 THE DEFENDANT: September 27, 1944.

4 THE COURT: And where were you born?

5 THE DEFENDANT: In the Philippines.

6 THE COURT: Have you ever been treated for any
7 mental illness?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever treated for any addiction
10 to any type of substance?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: In the last 72 hours have you taken any
13 type of medication?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And what medication have you taken?

16 THE DEFENDANT: The medication for the flu.

17 THE COURT: For the flu?

18 THE DEFENDANT: For the flu.

19 THE COURT: And was that medication provided to you
20 by a personnel -- medical personnel at the MDC?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Besides -- do you know the name of the
23 medication?

24 THE DEFENDANT: It's -- what do you call it?

25 Antibiotics, antibiotics, Tri -- Tri -- I couldn't remember it

1 right now, but I could provide it later to my lawyer.

2 THE COURT: But it's antibiotics that you are
3 taking?

4 THE DEFENDANT: It's antibiotics. They give me four
5 tablets. I am down to the last tablet.

6 THE COURT: Other than medication for the flu,
7 antibiotics, have you taken any other medication in the last 72
8 hours?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: What other medication?

11 THE DEFENDANT: Medication for the heart because I
12 have -- I have palpitation problem, medication for high blood,
13 because I need maintenance dosage for high blood, both in the
14 morning and the evening, and medication for prostate and also
15 for cholesterol.

16 THE COURT: And the medication for high blood, do
17 you mean high blood pressure?

18 THE DEFENDANT: High blood pressure.

19 THE COURT: Any other medications?

20 THE DEFENDANT: I take aspirin as part of the heart
21 medication.

22 THE COURT: Now, are you feeling the effects of any
23 of that medication as you sit here today?

24 THE DEFENDANT: No, Your Honor. I have been taking
25 it daily for several years already, except for the flu.

1 THE COURT: Okay. And then do you feel well enough
2 to proceed today?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you have any condition, any physical
5 condition, mental condition or emotional condition, that could
6 in any way affect your understanding of the proceedings today?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Have you ever been under the care of a
9 psychiatrist?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Mr. Callahan, have you been able to talk
12 to your client this morning and this afternoon?

13 MR. CALLAHAN: I have, Your Honor.

14 THE COURT: And do you believe he is in full
15 possession of his faculties and fully competent to enter his
16 pleas?

17 MR. CALLAHAN: Yes, Your Honor.

18 THE COURT: Mr. Reodica, by entering your pleas of
19 guilty, you are giving up certain valuable rights. You are
20 giving up your right to a speedy and public trial. You are
21 giving up your right to be tried by a jury. Alternatively, you
22 can waive jury and be tried by the Court. In either case, you
23 are giving up your right to persist in your pleas of not guilty
24 and to have the Government prove your guilt beyond a reasonable
25 doubt.

1 You have a right to be represented by an attorney
2 throughout all proceedings, including trial. If you cannot
3 afford counsel, one is appointed at no cost to yourself. You
4 are giving up your right to confront and cross-examine all
5 witnesses called to testify against you, the right to object to
6 physical evidence offered against you. You are giving up your
7 right to present your own witnesses and to produce your own
8 physical evidence and to use the subpoena power of the court to
9 compel the production of evidence and the production of
10 witnesses that you would want to call on your behalf.

11 I mentioned your privilege against self-incrimination. By
12 entering your plea of guilty, you are giving up that right
13 because your plea of guilty incriminates you. At a trial you
14 would also have the right to testify. At the same time you
15 cannot be compelled to testify or incriminate yourself in any
16 way. If you chose not to testify, the fact that you did not
17 testify cannot be used against you.

18 Have you discussed each and every one of these rights with
19 Mr. Callahan?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You understand each and every one of
22 these rights?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And do you have any questions of this
25 Court or your attorney regarding any one of these rights?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: And at this time do you freely,
3 voluntarily and expressly give up each and every one of these
4 rights and agree that the Court can continue taking your plea?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And does counsel join and concur in each
7 of the waivers?

8 MR. CALLAHAN: I do, Your Honor. Thank you.

9 THE COURT: In the redacted indictment, sir, you're
10 charged with violations of Title 18 United States Code Section
11 1344, which is a scheme to defraud bank and savings and loan
12 associations and then Title 18 U.S. Code Section 1014, a false
13 statement in an application.

14 May I have the assistant U.S. attorney advise the
15 defendant as to the elements of each count that he will be
16 entering pleas of guilty to. Would you advise him also of any
17 minimum mandatory penalty that must be imposed, any maximum
18 penalty that could be imposed. Would you advise him of
19 supervised release, the collateral consequences of his plea and
20 any obligation to make or pay restitution, and then any other
21 advisements that would apply in light of the fact that the
22 counts of conviction reference an indictment that was filed in
23 the 1990s.

24 MS. KUMAR: Yes, Your Honor.

25 For the defendant to be guilty of the crimes charged in

1 Counts One, Two, Eighteen, Nineteen, Twenty, Twenty-Two,
2 Thirty-One, Thirty-Two and Forty-One, that is bank fraud in
3 violation of Title 18 United States Code Section 1344, the
4 following must be true: Defendant knowingly carried out a
5 scheme or plan to obtain money or property from financial
6 institutions. Defendant knew that the statements or promises
7 were false. The statements or promises were material, that is,
8 they had a natural tendency to influence or were capable of
9 influencing these financial institutions to part with money or
10 property. Defendant acted with the intent to defraud, and
11 these financial institutions were federally insured.

12 For the defendant to be guilty of the crimes charged in
13 Counts Four, Five and Six, Twenty-Five, Twenty-Six,
14 Twenty-Seven, Twenty-Nine, Thirty-Three, Thirty-Four,
15 Thirty-Five, Thirty-Six, Thirty-Seven, Thirty-Eight,
16 Thirty-Nine and Forty, Forty-Nine and Fifty, that is false
17 statements on a loan application in violation of Title 18
18 United States Code Section 1014, the following must be true:
19 The defendant made a false statement or report to a federally
20 insured financial institution. The defendant made the false
21 statement or report to the financial institution knowing that
22 it was false, and the defendant did so for the purpose of
23 influencing in any way the action of these financial
24 institutions.

25 The statutory maximum sentence that the Court can impose

1 for a Title -- for a violation of Title 18 United States Code
2 1014, which took place in 1984 to 1988, is 2 years of
3 imprisonment, a 3-year period of supervised release, a fine of
4 \$250,000, or twice the gross gain or gross loss resulting from
5 the offense, whichever is greatest, and a mandatory special
6 assessment of \$50.

7 Defendant understands that the statutory maximum sentence
8 that the Court could impose for a violation -- for each
9 violation of 18 United States Code 1344, which took place
10 between 1984 and 1988, is 5 years of imprisonment, a 3-year
11 period of supervised release, a fine of \$250,000, or twice the
12 gross gain or gross loss resulting from the offense, whichever
13 is greatest, and a mandatory special assessment of \$50.

14 Therefore, the total maximum sentence for all offenses to
15 which defendant is pleading guilty is 79 years of imprisonment,
16 a 3-year period of supervised release, a fine of \$6.5 million,
17 or twice the gross gain or gross loss resulting from the
18 offenses, whichever is greatest, and a mandatory special
19 assessment of \$1,300.

20 In addition, the Court may order defendant to pay
21 restitution to any victim for any losses suffered by the victim
22 as a result of any relevant conduct in connection with the
23 offense to which defendant is pleading guilty and any counts
24 dismissed.

25 The supervised release is a period of time following

1 imprisonment during which defendant will be subject to various
2 restrictions and requirements. If the defendant violates one
3 or more of the conditions of the supervised release term
4 imposed, defendant may be returned to prison for all or part of
5 the term of supervised release authorized by statute for the
6 offense that resulted in the term of supervised release, which
7 could result in defendant serving a total term of imprisonment
8 greater than the statutory maximum stated above.

9 By pleading guilty, defendant may be giving up valuable
10 government benefits and valuable civic rights, such as the
11 right to vote, the right to possess a firearm, the right to
12 hold office and the right to serve on a jury.

13 Once the Court accepts the defendant's plea, it will be a
14 federal felony for the defendant to possess a firearm or
15 ammunition. There are also various other collateral
16 consequences to this plea of guilty, including, but not limited
17 to, revocation of probation, parole or supervised release in
18 another case and suspension or revocation of a professional
19 license.

20 Also, if defendant is not a United States citizen, the
21 felony conviction in this case may subject defendant to
22 removal, also known as deportation, which may, under some
23 circumstances, be mandatory; denial of citizenship; and denial
24 of admission to the United States in the future.

25 Furthermore, for Counts One, Nineteen, Twenty-Seven,

1 Thirty-One, Thirty-Three, Thirty-Four, Forty-Nine and Fifty,
2 the Government understands that these are -- would be under
3 preguidelines, before the guidelines were enacted. So for
4 these counts, the defendant will be subject -- will not be
5 subject to the sentencing guidelines, and the Court has the
6 discretion to sentence from the minimum to the statutory
7 maximum on each of those counts.

8 THE COURT: Thank you.

9 MR. CALLAHAN: Your Honor, forgive me. I know this
10 is a little unusual. May I have a moment with counsel for just
11 one fact?

12 THE COURT: Yes.

13 MR. CALLAHAN: Thank you.

14 (Discussion off the record.)

15 MR. CALLAHAN: One brief moment, Your Honor. Thank
16 you.

17 (Counsel and defendant conferred off the record.)

18 MR. CALLAHAN: Your Honor, thank you very much.

19 THE COURT: Okay. The record should reflect that
20 Mr. Callahan has consulted and had conversation with his
21 client.

22 I just want to make sure, Mr. Callahan, that all of your
23 client's questions and any communication you needed to have
24 with him has taken place.

25 MR. CALLAHAN: It has, Your Honor. Thank you very

1 much.

2 THE COURT: Do you need additional time?

3 MR. CALLAHAN: I do not.

4 THE COURT: Mr. Reodica, have you -- did you hear
5 the statement of the U.S. attorney?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And did you understand it?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have you discussed the elements of all
10 of the offenses that you will be entering pleas to with your
11 attorney?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you discussed the nature of the
14 offenses with your attorney?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You understand the penalties that could
17 be imposed, sir?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: You understand the maximum penalty that
20 could be imposed?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: The Court has not conducted an
23 independent analysis as to the maximum penalty. The Government
24 has indicated that the maximum penalty is 79 years in federal
25 custody.

1 Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you understand the obligation to
4 pay restitution in this case?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And do you understand the fine that
7 could be imposed in this case, which is up to \$6.5 million?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you have any questions regarding the
10 penalties?

11 THE DEFENDANT: No.

12 THE COURT: Are you a United States citizen?

13 THE DEFENDANT: Not anymore, Your Honor. I am an
14 Australian citizen now.

15 THE COURT: Were you ever a United States citizen?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Did you formally renounce your
18 citizenship?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: So I'm not sure what your status is, but
21 your plea here -- one possible consequence is that your plea
22 here today could result in deportation; denial of U.S.
23 citizenship, should you be able to apply for that; denial of
24 permanent resident status.

25 Do you understand those consequences?

1 THE DEFENDANT: Denial of permanent status in the
2 United States?

3 THE COURT: Yes.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Now, there could be other consequences
6 in other countries because of your plea here today. As I
7 understand it, you are a citizen of Australia; is that correct?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Are you a citizen of the Philippines
10 also?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Okay. Your plea here today could cause
13 your citizenship in Australia to be revoked or set aside. I'm
14 not sure what the legal consequences are in reference to
15 Australia, but there may be consequences regarding your
16 citizenship in Australia.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And it may be that you could be deported
20 from Australia back to another country, including, but not
21 limited to, the Philippines.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Your plea here today may affect your
25 ability to travel to other countries. There are certain

1 countries around the world that will not let you visit if you
2 have a conviction, felony conviction.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And your plea here today may have
6 certain other collateral consequences, which you can't predict.
7 If you hold a professional license in the United States, if you
8 hold a professional license in Australia or any other country,
9 your plea here today could cause that professional license to
10 be revoked or set aside.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Or suspended.

14 You understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And your plea here today may have
17 collateral consequences in Australia. As I understand it,
18 there are certain legal proceedings taking place in Australia.
19 I know very little about those proceedings, but I understand
20 those are legal proceedings. There could be civil prosecutions
21 in Australia, and your plea here today could impact the legal
22 proceedings in Australia.

23 Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you understood everything that has

1 been said so far?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you wish to continue with your
4 plea, sir?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you have any prior convictions in the
7 United States?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: And I accept your claim that you do not.
10 If for any reason you do and you are on parole, probation or
11 supervised release to any other Court, your plea here today
12 could find you to be in violation before another judge here in
13 the United States, and you could serve additional time in
14 custody.

15 Do you understand that?

16 THE DEFENDANT: Are there any charges with any other
17 judge other than yourself, Your Honor?

18 THE COURT: The question I asked you is whether you
19 have any convictions, whether you have committed any violations
20 of any law in the United States and whether you have been
21 convicted of any offenses.

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: And I'm accepting your claim that you
24 have not. If you have a conviction, the important part is that
25 your plea here today could cause you to be found in violation

1 before another judge, and you could serve additional time in
2 custody.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: You understand that? Do you understand
5 that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Now, at the time of sentencing, the
8 Court will sentence you pursuant to the Sentencing Reform Act
9 of 1984. The Court will also take into consideration all of
10 the sentencing laws that apply at the time that the indictment
11 was rendered here, and also the United States Sentencing
12 Commission Guidelines. The sentencing in this case can be very
13 complex.

14 Have you been able to discuss with your attorney the
15 sentencing issues that will take place at the time of
16 sentencing?

17 Mr. Callahan, have you discussed with him the sentencing
18 issues, sir?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And has your attorney explained to you
21 that the Court will take into consideration at the time of
22 sentencing the sentencing guidelines?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And has your attorney told you that the
25 guidelines are advisory, and the Court has discretion to impose

1 a sentence more severe or less severe than called for by the
2 guidelines?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now, what's very important in the taking
5 of your plea today is that you understand that the sentencing
6 issues in this case are complex. You're not going to be able
7 to withdraw your plea. And if you enter a plea today, you will
8 not be able to withdraw your plea if you receive a sentence
9 more severe than you believe you will receive.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And you understand that no one today can
13 predict the sentence you will receive at the time of
14 sentencing?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Has anybody indicated to you today the
17 type of sentence you will receive at the time of sentencing?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Now, you are entering these pleas here
20 today without the benefit of a plea agreement; is that correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Has anyone made any promises to you in
23 exchange for your pleas here today, sir?

24 THE DEFENDANT: No.

25 THE COURT: Has anyone used any force of violence or

1 made any threats against you or anyone else to cause you to
2 want to enter a plea here today?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Do you feel well enough to enter your
5 pleas here today?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I just want to make sure that you
8 understand that your pleas here today will deprive you of
9 certain valuable rights in the United States, including your
10 right to vote, the right to hold public office or right to
11 serve on a jury or the right to possess a firearm.

12 Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And your pleas here today may have
15 certain collateral consequences in Australia.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: I just want to make sure no one has made
19 any promises to you regarding any leniency here because of your
20 plea here today. Has anyone made those types of promises to
21 you?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: May I have the factual basis for the
24 defendant's plea.

25 Would you listen carefully. If you have any concerns, if

1 you wish to make any clarifications, if you have any objections
2 to the factual basis, then make sure you alert us, and then you
3 can discuss that with Mr. Callahan so we can resolve all those
4 issues. So it's going to be read into the record, so listen
5 carefully.

6 MS. KUMAR: At all times relevant to the indictment,
7 Eminiano Reodica, Jr., also known as Jun Reodica, the
8 defendant, was the owner/principle shareholder of Grand
9 Wilshire Group of Companies, GWG. GWG was a group of
10 businesses in the financing of automobiles. Its operations
11 included two car dealerships and three finance companies and
12 was headquartered in Glendora, California.

13 In order to finance its operating expenses, GWG, through
14 its finance companies, obtained lines of credit from a number
15 of financial institutions. These financial institutions
16 included Union Bank, First Los Angeles Bank, Dai-Ichi Kangyo
17 Bank of California, Manilabank California, First Central Bank,
18 Philadelphia National Bank and Imperial Savings Association,
19 collectively the lenders.

20 At all times relevant to the counts to which defendant is
21 pleading guilty, the deposits of these financial institutions
22 were federally insured by the Federal Deposit Insurance
23 Corporation or Federal Savings and Loan Insurance Corporation.
24 GWG also obtained lines of credit through private finance
25 companies, Heller Financial and General Electric Capital

1 Corporation.

2 Under the terms of GWG's credit agreements with the
3 lenders, it pledged the car contracts as collateral on the
4 lines of credit. GWG was required to collect the car payments
5 from the car buyers and give the money to the lender. GWG was
6 also supposed to let the lenders know if the car buyers were
7 not making timely payments on the car loan. If a car was
8 delinquent on the loan, GWG could not use that car contract as
9 security for the line of credit. GWG was also made to
10 repurchase or replace that delinquent contract with a new
11 contract.

12 Unlawful fronting of delinquent car payments: Defendant
13 instructed some of his employees to use GWG funds to front
14 payments owed on delinquent car contracts, car sales contracts
15 that had been pledged as collateral on the credit lines
16 extended to GWG. By fronting the payments, defendant and GWG
17 were able to conceal from the lenders the true delinquency rate
18 on the contracts.

19 Counts One and Two: Defendant knowingly executed and
20 attempted to execute and caused to execute a scheme to defraud
21 Imperial Bank, and by false and fraudulent pretenses,
22 representations and promises as alleged in Counts One and Two
23 of the indictment.

24 More specifically, between April 10th, 1987 and June 27th,
25 1988, defendant caused 46 fronted delinquent payments to Union

1 Bank and Imperial Savings as described in paragraphs 11-B to
2 11-D, as in dog, 11-F, 11-G, 11-I to 11-K, 11-M, 11-O to 11-Q,
3 11-S to 11-W and 11-Y, and paragraphs 13-E to 13-I, 13-L to
4 13-R, 13-T, 13-U, 13-W to 13-JJ of the indictment.

5 The false statements or representations made to Union Bank
6 and Imperial Savings regarding the payments were material and
7 had a natural tendency to influence or were capable of
8 influencing Imperial Savings to part with money or property.

9 Counts Four to Six: Defendant knowingly made and caused
10 to be made to Imperial Savings false statements for the purpose
11 of influencing the actions of Imperial Savings upon a line of
12 credit to GWG as alleged in Counts Four through Six in the
13 indictment.

14 More specifically, in or around May 1988, June 1988 and
15 July 1988, defendant submitted false aging reports,
16 specifically aging reports for the months of April, May and
17 June of 1988, each of which concealed delinquent payments by
18 GWG customers under motor vehicle contracts that were pledged
19 to Imperial Savings as collateral on its credit line to GWG.

20 Double pledging of collateral: Defendant also schemed to
21 defraud the lenders by pledging the same car loan contract as
22 collateral to more than one lender at the same time. At
23 defendant's instructions, GWG repossessed cars from its
24 customers who were delinquent on their loans without disclosing
25 the repossession to the lenders, again without informing the

1 lenders GWG resold those loans and reassigned the new car loan
2 contracts to another lender as collateral credit, thus the same
3 car would be pledged to two different lenders for collateral.

4 Count Eighteen, defendant knowingly executed and attempted
5 to execute and caused the execution of a scheme to defraud
6 Manilabank by means of false and fraudulent pretenses,
7 representation and promises as alleged in Count Eighteen of the
8 indictment.

9 More specifically, as described in paragraphs 30-A and
10 30-B of the indictment, on or about May 29th, 1985, and on or
11 about April 23rd, 1987, defendant, knowing that Manilabank was
12 then holding a motor vehicle contract for two cars as
13 collateral on its credit line to GWG, pledged those same two
14 motor vehicle contracts for the same automobiles to a second
15 lender.

16 The false statements or representations made to Manilabank
17 regarding the pledging of collateral were material and had a
18 natural tendency to influence or were capable of influencing
19 Manilabank to part with money or property.

20 Count Nineteen: Defendant knowingly executed and
21 attempted to execute and caused the execution of a scheme to
22 defraud Union Bank by means of false and fraudulent pretenses,
23 representations and promises as alleged in Count Nineteen.

24 More specifically, as described in paragraph 32-A of the
25 indictment, on or about May 29th, 1985, defendant caused a

1 motor vehicle contract to be pledged as collateral on Union
2 Bank's credit line to GWG knowing that an earlier motor vehicle
3 contract for the same automobile was then pledged to another
4 lender. These false statements or representations made to
5 Union Bank regarding the pledging of collateral were material
6 and had a natural tendency to influence or were capable of
7 influencing Union Bank to part with money or property.

8 Count Twenty: Defendant knowingly executed and attempted
9 to execute and caused the execution of a scheme to defraud
10 Imperial Savings by means of false and fraudulent pretenses,
11 representations and promises as alleged in Count Twenty.

12 More specifically, as described in paragraphs 34-A, 34-C,
13 34-D and 34-F of the indictment, between on or about April
14 23rd, 1987 and on or about March 31st, 1988, defendant caused
15 four motor vehicle contracts for cars to be pledged as
16 collateral on Imperial Savings' credit line to GWG knowing that
17 earlier motor vehicle contracts for the same four automobiles
18 were then pledged to another lender. These false statements or
19 representations made to Imperial Savings regarding the pledging
20 of collateral were material and had a natural tendency to
21 influence or capable of influencing Imperial Savings to part
22 with money or property.

23 Count Twenty-Two: Defendant knowingly executed and
24 attempted to execute and caused to execute a scheme to fraud by
25 fraudulent pretenses, preparations and promises as alleged in

1 Count Twenty-Two.

2 More specifically, as described in paragraphs 38-A and
3 38-B of the indictment, on or about January 26th, 1988,
4 defendant caused two motor vehicle contracts for cars to be
5 pledged as collateral in First Central Bank's credit line to
6 GWG knowing that earlier motor vehicle contracts for the same
7 automobile were then pledged to another lender. These false
8 statements or representations regarding the pledging of
9 collateral were material and had a natural tendency to
10 influence or were capable of influencing First Central Bank to
11 part with money or property.

12 Count 31: Defendant knowingly executed and attempted to
13 execute and caused the execution of a scheme to defraud
14 Manilabank by means of false and fraudulent pretenses,
15 representations and promises as alleged in Count Thirty-One.

16 More specifically, as described in paragraphs 50-A and
17 50-B of the indictment, on or about September 1st and September
18 3rd, 1984, defendant caused to be pledged to Manilabank as
19 collateral on its credit line to GWG two duplicate forged motor
20 vehicle contracts. The false statements or representations
21 made to Manilabank regarding the pledging of collateral were
22 material and had a natural tendency to influence or were
23 capable of influencing Manilabank to part with money or
24 property.

25 Count Thirty-Two: Defendant knowingly executed and

1 attempted to execute and caused the execution of a scheme to
2 defraud First Los Angeles Bank by means of false and fraudulent
3 pretenses, representations and promises as alleged in Count
4 Thirty-Two.

5 More specifically, as described in paragraphs 52-A through
6 52-F of the indictment, between on or about February 27th, 1988
7 and June 22nd, 1988, defendant caused to be pledged to First
8 Los Angeles Bank as collateral on its credit line to GWG six
9 duplicate forged motor vehicle contracts. These false
10 statements or representations made to First Los Angeles Bank
11 regarding the pledging of collateral were material and had a
12 natural tendency to influence or were capable of influencing
13 First Los Angeles Bank to part with money or property.

14 Counts Twenty-Five through Twenty-Seven, Twenty-Nine,
15 Thirty-Three through Forty: Defendant knowingly made and
16 caused to be made to First Central Bank, Imperial Savings,
17 Manilabank and First Los Angeles Bank false statements for the
18 purpose of influencing the action of these banks upon their
19 lines of credit to GWG as alleged in Counts Twenty-Five through
20 Twenty-Seven, Twenty-Nine, Thirty-Three through Forty of the
21 indictment.

22 More specifically, between on or about September 1st, 1984
23 and June 22nd, 1988, defendant caused to be pledged as
24 collateral for these credit lines 12 different motor vehicle
25 contracts for 12 different automobiles and represented that the

1 collateral were free and clear of all encumbrances when, in
2 fact, they were then pledged to another lender. First Central
3 Bank and Imperial were, during the relevant time period,
4 federally insured financial institutions.

5 The Employee Loan Investment Program: During GWG employee
6 meetings, defendant explained that the so-called Employee Loan
7 Investment Program was an investment opportunity and a benefit
8 to employees. Defendant caused employees to sign for car loans
9 which misrepresented that the purpose of the loan was for a car
10 when it was to provide operating capital to GWG.

11 Count Forty-One: Defendant knowingly executed and
12 attempted to execute and caused the execution of a scheme to
13 defraud Union Bank by means of false and fraudulent pretenses,
14 representations and promises as alleged in Count Forty-One of
15 the indictment.

16 More specifically, as described in paragraphs 60-A and
17 60-B of the indictment, on or about January 17th, 1985 and
18 December 31st, 1986, defendant submitted and caused to be
19 submitted to Union Bank false loan applications in the name of
20 GWG employees Ingrid Baysa and Marilou Ramos that
21 misrepresented the purpose of the loan was to purchase a car
22 when, in fact, the purpose of the loan was to provide capital
23 to GWG. The false statements or representations made to Union
24 Bank regarding the pledging of collateral were material and had
25 a natural tendency to influence or were capable of influencing

1 the banks to part with money -- Union Bank to part with money
2 or property.

3 Counts Forty-Nine and Fifty: Defendant knowingly made and
4 caused to be made to Union Bank false statements for purposes
5 of the action on this bank as alleged in Counts Forty-Nine
6 through Fifty.

7 More specifically, on or about January 17th, 1985 and
8 December 31st, 1986, defendant knowingly submitted and caused
9 to be submitted false loan applications in the name of GWG
10 employees Ingrid Baysa and Marilou Ramos, which misrepresented
11 that the purpose of the loan was to purchase an automobile
12 when, in fact, the purpose of the loan was to provide operating
13 capital to GWG.

14 THE COURT: Okay. Mr. Reodica, did you hear the
15 statement?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And did you understand each and every
18 word?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And is everything that the Government
21 said about you and your conduct and intent true and correct?
22 Is everything correct, sir.

23 (Counsel and defendant conferred off the record.)

24 THE DEFENDANT: May I speak with my counsel,
25 Your Honor?

1 THE COURT: Yes, please.

2 (Counsel and defendant conferred off the record.)

3 THE DEFENDANT: Yes, Your Honor. They are accurate.

4 THE COURT: Okay. Let me just ask the question
5 again so we are clear. Is everything that the Government just
6 said about you and your conduct and intent true and correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did you, in fact, do what the Government
9 has said in their offer of proof regarding your criminal
10 behavior? Did you do it, sir?

11 THE DEFENDANT: The offer of proof?

12 MS. GITS: Did you do what they said you did?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And would you be entering your pleas of
15 guilty because you believe you are guilty of each count that
16 the Government has just reviewed here in open court? Do you
17 believe you are guilty of each count, sir?

18 THE DEFENDANT: At the present time, yes,
19 Your Honor?

20 THE COURT: Well, I just want to make sure so
21 there's no ambiguity here. Do you believe you are guilty of
22 each of the counts that the Government has just placed on the
23 record?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you have any questions of the Court

1 or your counsel at this time, sir?

2 THE DEFENDANT: May I have a moment with him?

3 THE COURT: Yes.

4 (Counsel and defendant conferred off the record.)

5 THE DEFENDANT: No, I don't have any more questions,
6 Your Honor.

7 THE COURT: And the record should reflect that he
8 has consulted with Mr. Callahan.

9 I just want to make sure that the Government agrees that
10 there's a factual basis for the plea.

11 MS. KUMAR: We do, Your Honor. The Government would
12 also just note, in an abundance of caution, to provide notice
13 to the defendant that it intends to prove its sentencing or
14 loss amount of approximately 50 million and then an additional
15 80 million in the Commercial Paper Program just so that
16 everyone is on the same page.

17 MR. CALLAHAN: Your Honor, we understand that
18 Mr. Reodica is not agreeing to that amount, obviously.

19 THE COURT: The loss amount of 50 million for which
20 program?

21 MS. KUMAR: 50 million for the crimes that he just
22 pleaded guilty and 80 million in addition for relevant conduct
23 for the Commercial Paper Program, so a total of 130 million.
24 The Government understands that the defendant has not agreed to
25 that, but just wants to put it on the record so the defendant

1 is aware.

2 THE COURT: Mr. Reodica, do you understand what the
3 Government intends to try to prove at the time of sentencing?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. Do you have any questions
6 regarding that?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: And, Mr. Callahan, have you been able to
9 review all of the discovery provided by the Government here?

10 MR. CALLAHAN: I have, Your Honor.

11 THE COURT: And did you review all of the facts and
12 discovery with your client?

13 MR. CALLAHAN: I did.

14 THE COURT: Do you feel that you had enough time to
15 consult with Mr. Reodica before his entry of his guilty pleas?

16 MR. CALLAHAN: I do, Your Honor.

17 THE COURT: And do you believe that he would be
18 entering his pleas freely and voluntarily with the full
19 understanding of the charges?

20 MR. CALLAHAN: Your Honor, I do.

21 THE COURT: Do you believe it would be in his best
22 interest to enter pleas of guilty to each of the counts?

23 MR. CALLAHAN: I do, Your Honor.

24 THE COURT: And did you explore with him any
25 possible motion he could have brought on his behalf or explore

1 any of his defenses?

2 MR. CALLAHAN: I did.

3 THE COURT: And you agreed there is a factual basis?

4 MR. CALLAHAN: I'm sorry?

5 THE COURT: You agree there is a factual basis?

6 MR. CALLAHAN: I do, Your Honor, yes.

7 THE COURT: Mr. Reodica, do you feel you have had
8 enough time to consult with counsel before entering your pleas
9 of guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And do you feel your attorney has fully
12 represented you?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Have you been able to understand
15 everything that has occurred so far in court?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Have all of your questions been
18 answered?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you need any more time to consult
21 with your attorney before entering your pleas of guilty?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Do you feel that your attorney has been
24 able to consider all of the possible defenses that you believe
25 you might have to the charges here?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Is the Government satisfied that the
3 Court has complied with all of the Federal Rules of Criminal
4 Procedure?

5 MS. KUMAR: Yes, Your Honor.

6 THE COURT: Sir, are you ready to enter your pleas
7 of guilty?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And let me have the Government follow
10 along, just to make sure that --

11 THE DEFENDANT: One moment, sir.

12 THE COURT: -- there are no mistakes.

13 THE DEFENDANT: May I speak with my counsel?

14 THE COURT: Yes.

15 (Counsel and defendant conferred off the record.)

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: Have all of your questions been
18 answered?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you need any additional time to speak
21 to Mr. Callahan?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Are you now ready to enter your pleas?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Count One, beginning at a time unknown

1 and continuing to at least in or about August 1988, Count One
2 charges a violation of Title 18 U.S. Code section 1344, within
3 the Central District of California and elsewhere, sir, you,
4 Mr. Reodica, Jr., also known as Jun Reodica or Jun Reodica,
5 knowingly executed and attempted to execute and participated in
6 a scheme to defraud a financial institution and to obtain money
7 and property owned by and under the custody and control of such
8 financial institution by means of false and fraudulent
9 pretenses, representations and promises.

10 How do you plead, sir?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: We go to Count Two, alleging a violation
13 of Title 18 U.S. Code Section 1344, on or about the following
14 dates, within the Central District of California, you, Mr.
15 Reodica, knowingly executed and attempted to execute and caused
16 the execution of a scheme to defraud Imperial Savings and to
17 obtain monies and funds owned by and under the custody and
18 control of Imperial Savings by means of false and fraudulent
19 pretenses, representations and promises. The dates are alleged
20 on page 14, 15, 16, 17, 18, looks like 19 and 20 of the
21 indictment.

22 How do you plead to Count Two, sir?

23 THE DEFENDANT: Guilty, Your Honor.

24 THE COURT: Counts Four through Six, alleging a
25 violation of Title 18 U.S. Code Section 1014; 2, alleging in or

1 about the dates listed below -- and we will get to the dates --
2 within the Central District of California, sir, you,
3 Mr. Reodica, knowingly made and caused to be made false
4 statements to a federally insured financial institution, namely
5 Imperial Savings, for the purpose of influencing the actions of
6 Imperial Savings upon a credit line, in that you, sir,
7 submitted the false aging reports listed below, each of which
8 concealed delinquent payments by GWG commerce under motor
9 vehicle contracts that were pledged to Imperial Savings as
10 collateral on its line of credit to GWG.

11 Count Four alleges a date of May 1988, aging report for
12 the month of April 1988.

13 How do you plead to Count Four?

14 THE DEFENDANT: Guilty, Your Honor.

15 THE COURT: Count Five alleges a date of June 1988,
16 aging report for the month of May 1988.

17 How do you plead to Count Five?

18 THE DEFENDANT: Guilty, Your Honor.

19 THE COURT: Count Six, date of July 1988, aging
20 report for the month of June 1988.

21 How do you plead?

22 THE DEFENDANT: Guilty, Your Honor.

23 THE COURT: Okay. We go to Counts Eighteen through
24 Twenty. Count Eighteen charges a violation of Title 18
25 U.S. Code Section 1344, alleging beginning on a time unknown

1 and continuing to at least in or about August 1988, within the
2 Central District of California and elsewhere, you, Mr. Reodica,
3 also known as Jun Reodica, knowingly executed, attempted to
4 execute and participated in a scheme to defraud a financial
5 institution and to obtain money and property owned by and under
6 the control and custody of such financial institution by means
7 of false and fraudulent pretenses, representations and
8 promises.

9 How do you plead to Count Eighteen, sir?

10 THE DEFENDANT: Guilty, Your Honor.

11 THE COURT: Count Nineteen charges a violation of
12 Title 18 U.S. Code Section 1344, alleging on the following
13 dates, within the Central District of California, you, sir,
14 Mr. Reodica, knowingly executed and attempted to execute and
15 caused the execution of a scheme to defraud Union Bank and to
16 obtain monies and funds owned by and under the custody and
17 control of Union Bank by means of false and fraudulent
18 pretenses, representations and promises as follows.

19 And then Count Nineteen alleges on or about May 29th,
20 1985, you, Mr. Reodica, caused a motor vehicle contract for a
21 1984 Mitsubishi Tredia, V.I.N. number JA3BF46FZ800250, to be
22 pledged as collateral on Union Bank's credit line to GWG
23 knowing that the earlier motor vehicle contract for the same
24 automobile was then pledged to another lender.

25 How do you plead to Count Nineteen?

1 THE DEFENDANT: Guilty, Your Honor.

2 THE COURT: Count Twenty charges a violation of
3 Title 18 U.S. Code Section 1344, alleging on the following
4 dates, within the Central District of California, you, sir,
5 Mr. Reodica, knowingly executed and attempted to execute and
6 caused the execution of a scheme to defraud Imperial Savings
7 and to obtain monies and funds owned by and under the custody
8 and control of Imperial Savings by means of false and
9 fraudulent pretenses, representations and promises as follows:
10 On or about April 23rd, 1987, you, sir, caused a motor vehicle
11 contract for a 1984 Nissan 200 SX, V.I.N. number
12 JN1PS26S9EW642480, to be pledged as collateral on Imperial
13 Savings' credit line to GWG, knowing that an earlier motor
14 vehicle contract for the same automobile was then pledged to
15 another lender.

16 How do you plead to Count Twenty?

17 THE DEFENDANT: Guilty, Your Honor.

1 follows: On or about January 26, 1988, you, sir, caused a
2 motor vehicle contract for a 1987 Mitsubishi Galant, V.I.N.
3 number JA3BB46L2HY011606, to be pledged as collateral on First
4 Central Bank's credit line to GWG, knowing that an earlier
5 motor vehicle contract for the same vehicle was then pledged to
6 another lender.

7 It also alleges that on or about January 26, 1988, you,
8 sir, caused a motor vehicle contract for the 19 -- the same
9 1987 Mitsubishi Galant, same V.I.N. number -- sorry, different
10 V.I.N. number, V.I.N. number JA3BB46L5HY007971, to be pledged
11 as collateral on First Central Bank's credit line to GWG,
12 knowing that an earlier motor vehicle contract for the same
13 automobile was then pledged to another lender.

14 How do you plead to Count Twenty-Two?

15 THE DEFENDANT: Guilty, Your Honor.

16 THE COURT: We go to Count Twenty-Five and
17 Twenty-Six. Count Twenty-Five and Twenty-Six charge a
18 violation of Title 18 U.S. Code Section 1014; 2, alleging on or
19 about the dates below, you, sir, Mr. Reodica, also known as Jun
20 Reodica, knowingly made and caused to be made to a federally
21 insured financial institution, namely First Central Bank, a
22 false statement for the purpose of influencing the actions of
23 the First Central Bank upon a credit line to GWG, in that you,
24 sir, caused to be pledged as collateral for this credit line
25 motor vehicle contracts for the automobiles listed below, and

1 represented that such collateral was free and clear of all
2 encumbrances when, in fact, the collateral was then pledged to
3 another lender.

4 Count Twenty-Five alleges a date of January 26, 1988, 1987
5 Mitsubishi Galant, V.I.N. number JA3BB46L2HY011606.

6 How do you plead to Count Twenty-Five?

7 THE DEFENDANT: Guilty, Your Honor.

8 THE COURT: Count-Twenty-Six, same allegations, same
9 date, January 26, 1988, 1987 Mitsubishi Galant, V.I.N. number
10 JA3BB46L5HY007971.

11 How do you plead to Count-Twenty-Six?

12 THE DEFENDANT: Guilty, Your Honor.

13 THE COURT: Okay. We go to Count Twenty-Seven,
14 charging a violation of Title 18 U.S. Code Section 1014; 2,
15 alleging on or about the date below, you, sir, Mr. Reodica,
16 knowingly made and caused to be made to a federally insured
17 financial institution, namely Imperial Savings, a false
18 statement for the purpose of influencing the actions of
19 Imperial Savings upon a credit line to GWG, and that you caused
20 to be pledged as collateral for this credit line motor vehicle
21 contracts for the vehicles listed below, and represented that
22 such collateral was free and clear of all encumbrances when, in
23 fact, the collateral was then pledged to another lender.

24 Count Twenty-Seven references a date of April 23rd, 1987,
25 a 1984 Nissan 200 SX, V.I.N. number JN1PS26S9EW642480.

1 How do you plead to Count Twenty-Seven?

2 THE DEFENDANT: Guilty, Your Honor.

3 THE COURT: We go to Count Twenty-Nine, alleging a
4 violation of Title 18 U.S. Code Section 1014; 2, on or about
5 the dates listed below, you, sir, knowingly made and caused to
6 be made to a federally insured financial institution, namely
7 Imperial Savings, a false statement for the purpose of
8 influencing the actions of Imperial Savings upon a credit line
9 to GWG, in that defendant caused to be pledged as collateral
10 for this credit line motor vehicle contracts for the
11 automobiles listed below, and represented that such collateral
12 was free and clear from all encumbrances when, in fact, the
13 collateral had already been pledged to Imperial Savings.

14 Count Twenty-Nine references a date of March 31, 1988,
15 1988 Mitsubishi Cordia, V.I.N. number JA3BF44DXJZ011661.

16 How do you plead to Count Twenty-Nine?

17 THE DEFENDANT: Guilty, Your Honor.

18 THE COURT: We go to Count Thirty-One. Count
19 Thirty-One charges a violation of Title 18 U.S. Code Section
20 1344, alleging beginning on a time unknown and continuing to at
21 least on or about August 1988, you -- in the Central District
22 of California and elsewhere, you, sir, along with the other
23 named defendant, knowingly executed and attempted to execute
24 and participated in a scheme to defraud a financial institution
25 and to obtain money and property owned by and under the custody

1 and control of a financial institution by means of false and
2 fraudulent pretenses, representations and promises.

3 How do you plead to Count Thirty-One?

4 THE DEFENDANT: Guilty, Your Honor.

5 THE COURT: Count Thirty-Two charges a violation of
6 Title 18 U.S. Code Section 1344, alleging on or about the dates
7 listed, within the Central District of California, you, sir,
8 knowingly, and Mr. DeCastro knowingly executed and attempted to
9 execute and caused the execution of a scheme to defraud First
10 L.A. Bank to obtain monies and funds owned by and under the
11 custody and control of First L.A. Bank by means of false and
12 fraudulent pretenses, representations and promises.

13 How do you plead to Count Thirty-Two?

14 THE DEFENDANT: Guilty, Your Honor.

15 THE COURT: Okay. Go to Counts Thirty-Three and
16 Thirty-Four. Count Thirty-Three and Thirty-Four charge a
17 violation of Title 18 U.S. Code Section 1014, alleging on or
18 about the dates listed below, you, sir, along with
19 Mr. DeCastro, aided and abetted by each other, knowingly made
20 and caused to be made false statements to a federally insured
21 institution, namely Manilabank, for the purpose of influencing
22 the actions of Manilabank upon a credit line to GWG, in that
23 you and Mr. DeCastro caused duplicate, forged motor vehicle
24 contracts for the following automobiles to be submitted as
25 collateral on the line of credit.

1 Count Thirty-Three references a date of September 1st,
2 1984, automobile is a 1984 Nissan Sentra, V.I.N. number
3 JN1PB12S3EU157733.

4 How do you plead to Count Thirty-Three?

5 THE DEFENDANT: Guilty, Your Honor.

6 THE COURT: Count Thirty-Four references September
7 3rd, 1984, 1985 Mitsubishi Tredia, V.I.N. number
8 JA3BF46D3FZ800142.

9 How do you plead to Count Thirty-Four?

10 THE DEFENDANT: Guilty, Your Honor.

11 THE COURT: Counts Thirty-Five through Forty
12 reference the charges as follows: On or about the dates listed
13 below, a violation of Title 18 U.S. Code Section 1014, you,
14 sir, along with Mr. DeCastro, aided and abetted by each other,
15 knowingly made and caused to be made a false statement to a
16 federally insured financial institution, namely First L.A.
17 Bank, for the purpose of influencing the actions of First L.A.
18 Bank upon a credit line to GWG, and that you and Mr. DeCastro
19 caused to be forged motor vehicle contracts with the following
20 automobiles to be submitted as collateral on the credit line.

21 Count Thirty-Five references a date of February 27th,
22 1988, references a 1988 Diahatsu Charade, V.I.N. number
23 JD1FG1006J4307890.

24 How do you plead to Count Thirty-Five?

25 THE DEFENDANT: Guilty, Your Honor.

1 THE COURT: Count Thirty-Six references a date of
2 March 1, 1988. The automobile is a 1984 Fruehauf trailer,
3 V.I.N. number 1H4H02027GJ048002.

4 How do you plead to Count Thirty-Six?

5 THE DEFENDANT: Guilty, Your Honor.

6 THE COURT: Count Thirty-Seven references a date of
7 June 22nd, 1988, 1988 Mazda RX-7, V.I.N. number
8 JM1EC3316J0618030.

9 How do you plead to Count Thirty-Seven?

10 THE DEFENDANT: Guilty, Your Honor.

11 THE COURT: Count Thirty-Eight references a date of
12 June 22nd, 1988, a 1988 Buick Century, V.I.N. number
13 1G4AH5136J6440740.

14 How do you plead to Count Thirty-Eight?

15 THE DEFENDANT: Guilty, Your Honor.

16 THE COURT: Count Thirty-Nine references a date of
17 June 22nd, 1988, a 1988 Chevrolet Spectrum, V.I.N. number
18 J81RF2170J7559744.

19 How do you plead to Count Thirty-Nine?

20 THE DEFENDANT: Guilty, Your Honor.

21 THE COURT: Count Forty references a date of June
22 22nd, 1988, automobile 1988 Chevrolet S-10, V.I.N. number
23 1GNCS18Z1J8215994.

24 How do you plead?

25 THE DEFENDANT: Guilty, Your Honor.

1 THE COURT: We go to Count Forty-Nine. Count
2 Forty-Nine --

3 MS. KUMAR: Count Forty-One, Your Honor.

4 THE COURT: I don't have Count Forty-One on my list.

5 MS. KUMAR: That was one of the counts we read in
6 the factual basis, Your Honor. It is the loan investment
7 program.

8 THE COURT: Count Forty-One, alleging a violation of
9 Title 18 U.S. Code Section 1344.

10 I just want to make sure that it's defendant's intention
11 to enter a plea of guilty to Count Forty-One.

12 MR. CALLAHAN: Yes, it is, Your Honor.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Beginning at a time unknown and
15 continuing to at least in or about August 1988, within the
16 Central District of California, you, sir, along with
17 Mr. DeCastro, also known as Danny DeCastro, knowingly executed
18 and attempted to execute and participated in a scheme to
19 defraud a financial institution and to obtain money and
20 property owned by and under the custody and control of the
21 financial institution by means of false and fraudulent
22 pretenses, representations and promises.

23 How do you plead to Count Forty-One?

24 THE DEFENDANT: Guilty, Your Honor.

25 THE COURT: Count Forty-Nine, charging a violation

1 of Title 18 U.S. Code Section 13-1014; 2, alleging on or about
2 January 17th, 1985, within the Central District of California,
3 you, sir, and Mr. DeCastro aided and abetted by each other,
4 knowingly made and caused to be made to a federally insured
5 financial institution, namely Union Bank, false statements for
6 the purpose of influencing the actions of Union Bank upon a
7 loan application in the amount of approximately \$30,501.29, in
8 that you and Mr. DeCastro submitted and caused to be submitted
9 a false loan application in the name of GWG employee Ingrid
10 Baysa, which misrepresented that the purpose of the loan was to
11 purchase an automobile when, in fact, the purpose of the loan
12 was to provide operating capital to GWG.

13 How do you plead to Count Forty-Nine?

14 THE DEFENDANT: Guilty, Your Honor.

15 THE COURT: Count Fifty alleges or charges you with
16 a violation of Title 18 U.S. Code section 1014, alleging on or
17 about December 31st, 1986, within the Central District of
18 California, you, sir, along with Mr. DeCastro aided and abetted
19 by each other, knowingly made and caused to be made to a
20 federally insured financial institution, namely Union Bank,
21 false statements for the purpose of influencing the actions of
22 Union Bank upon a loan application in the amount of
23 approximately \$18,313.51, in that the defendants submitted and
24 caused to be submitted a false loan application in the name of
25 GWG employee Marilou Ramos, which misrepresented that the

1 purpose of the loan was to purchase an automobile when, in
2 fact, the purpose of the loan was to provide operating capital
3 to GWG.

4 How do you plead?

5 THE DEFENDANT: Guilty, Your Honor.

6 THE COURT: And I just want to make sure,
7 Mr. Callahan, that you join in all of the pleas.

8 MR. CALLAHAN: I do join in them, Your Honor.

9 THE COURT: The Court would find that the pleas have
10 been freely, voluntarily and expressly entered. The Court
11 would find that the defendant has entered his pleas with the
12 full understanding of the charges and the consequences of his
13 pleas. The Court would further find that defendant has been
14 informed of all of his constitutional and statutory rights. He
15 freely, voluntarily and expressly has given them up.

16 The Court has had the opportunity to observe Mr. Reodica
17 throughout the taking of his pleas. The Court is satisfied
18 that he has been fully alert and understands everything that
19 has occurred in court today. The Court has taken into
20 consideration the fact that he has -- is being treated for the
21 flu, and the Court is fully satisfied that has not affected his
22 ability to understand any of the matters that have been
23 conducted this afternoon. The plea would be -- the pleas would
24 be accepted by the Court.

25 And, Mr. Callahan, I just want to make sure that you agree

1 with the Court's last statement.

2 MR. CALLAHAN: I do, Your Honor.

3 THE COURT: And we need a sentencing date. This
4 case can be very technical in terms of the loss calculations
5 and attempted loss calculations. Let me encourage both sides
6 to see if you can enter stipulations, because most of what you
7 do in reference to loss calculations may be very technical, and
8 at the end of the day, not really important to the sentence
9 that will be imposed by the Court. I am interested in the
10 defendant's physical health, so to the extent that you have
11 medical reports or doctor's reports regarding his physical
12 health that are not detailed enough in the presentence
13 investigation report, then please bring it to the Court's
14 attention.

15 MR. CALLAHAN: Of course.

16 THE COURT: And then we need a sentencing date.

17 MR. CALLAHAN: Your Honor, as you anticipated, I am
18 going to be dealing with a loss calculation, and I am going to
19 be hiring, assuming CJA allows, a forensic accountant to assist
20 in the process of evaluating the loss, which could be
21 time-consuming. I was going to suggest -- I have had --

22 THE COURT: Again, the loss calculation here may be,
23 at best, very technical. There are so many counts that he's
24 entered pleas of guilty to. The Court has wide discretion in
25 terms of sentencing, and I hate to see counsel spend much time

1 and effort on a loss calculation when at the end of the day, it
2 may be for technical purposes only. So see if you can reach
3 agreement on loss calculation.

4 MS. PINKEL: Your Honor, if I may, most of the loss
5 calculations of the bank fraud comes from the bankruptcy files.
6 So what I did two and a half years ago when I thought the case
7 was going to plead out, I went to the national archives to look
8 at the bankruptcy files. So what I did was a very conservative
9 estimate of our loss, looked at what the bankruptcy trustee
10 allowed for the loss for the banks. And then in terms of the
11 investors, I also had -- there was a \$7,000 copy job, but we
12 had claims. We copied the claims that the original investors
13 filed in the bankruptcy. So this, hopefully, won't be overly
14 complicated.

15 THE COURT: Yes. I'm hoping that counsel will not
16 make it overly complicated. And I'm not sure whether there is
17 a need to engage a forensic accountant to analyze loss
18 calculation if it's not going to have a significant impact in
19 terms of sentencing. And the loss calculation claim by the
20 Government is 130 million, and I would hope that counsel could
21 reach a stipulation regarding loss calculation range, at least.

22 So we need a date.

23 MR. CALLAHAN: May I suggest, with everybody's
24 indulgence, the first week in January, something like that?

25 THE COURT: January of 2016?

1 MR. CALLAHAN: Yes.

2 THE COURT: Okay. January of 2016. Let's have it
3 the second week.

4 THE COURTROOM DEPUTY: Yes. That will be --

5 THE COURT: Second week in January. The first may
6 be a heavy calendar.

7 (Discussion off the record.)

8 MR. CALLAHAN: Upon discussions with the Government,
9 perhaps late January. I've got a trial beginning on January
10 12th.

11 THE COURT: Okay. Let's -- just give me a suggested
12 date. January --

13 MR. CALLAHAN: Mid-February to maybe --

14 THE COURT: January 25th, 2016 -- I mean 2016, yes.

15 THE COURTROOM DEPUTY: Your Honor, may we push it
16 to -- you're pretty filled there already. So can we push it to
17 February the 1st, 2016?

18 THE COURT: February 1st, 2016 for sentencing.

19 MR. CALLAHAN: All right, Your Honor.

20 THE COURTROOM DEPUTY: And sentencing positions be
21 due January the 18th -- or January the 19th. Tuesday, January
22 the 19th, 2016.

23 THE COURT: Okay. Thank you.

24 MR. CALLAHAN: Thank you, Your Honor.

25 THE COURT: This is probably the longest plea I have

1 ever taken.

2 MS. KUMAR: Thank you, Your Honor.

3 THE COURTROOM DEPUTY: The Court is in recess.

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

6 I, CAROL JEAN ZURBORG, Federal Official Realtime
7 Court Reporter, in and for the United States District Court for
8 the Central District of California, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code that the
10 foregoing is a true and correct transcript of the
11 stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page format is in
13 conformance with the regulations of the judicial conference of
14 the United States.

16 Date: May 19, 2016

/s/ CAROL JEAN ZURBORG

CAROL JEAN ZURBORG, CSR NO. 7921, CCRR
Federal Official Court Reporter

APPENDIX7

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5 Attorney for Defendant
EMINIANO REODICA
6

7
8 UNITED STATES DISTRICT COURT FOR THE
9 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION—LOS ANGELES

10 UNITED STATES OF AMERICA,) Case No. CR 94-121-SJO
11 Plaintiff,)
12 v.) **DEFENDANT'S REPLY TO
13 GOVERNMENT'S OPPOSITION TO
14 DEFENDANT'S MOTION TO
15 WITHDRAW HIS GUILTY PLEA**
16 Defendant.)
17)
18)
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TO THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE
FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND ASSISTANT UNITED
STATES ATTORNEY, RUTH C. PINKEL:

Defense counsel, Karen L. Goldstein, on behalf of Eminiano Reodica, hereby submits Defendant's Reply to the Government's Opposition to Defendant's Motion to Withdraw His Guilty Plea. This Reply is based on the attached memorandum of points and authorities, the attached exhibits, all files and records in this case, including the Defendant's Original Petition to Withdraw His Guilty Plea, Defendant's Supplemental

Motion to Withdraw His Guilty Plea, and any further information as may be presented at the hearing.

Dated: November 7, 2016 /s/ Karen L. Goldstein

/s/ Karen L. Goldstein

Law Offices of Karen L. Goldstein

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3 **Federal Cases**

4 *United States v. Garcia*, 401 F.3d 1008, 1013 (9th Cir. 2005) 8,9

5 *United States v. Harpham*, No. 2:11-CR-00042-JLQ, 2:15-cv-125-JLQ,
6 2011 U.S. Dist. LEXIS 148069, at *10 (E.D. Wash. Mar. 20, 2016) 9

7 *United States v. Nagra*, 147 F.3d 875, 880 (9th Cir. 1998) 6

8 **Federal Rules of Criminal Procedure**

9 Fed.R.Crim.P.11(d)(2)(B) 5,10
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1 **I. INTRODUCTION**

2 In its Opposition to the Defendant's Motion to Withdraw Guilty Plea [Hereinafter
3 "Gov. Opp."], the government has argued: (1) Mr. Reodica's claim of physical illness at
4 the time of the plea does not establish a fair and just reason for a plea withdrawal (Gov.
5 Opp. at 9-10); (2); Mr. Reodica's claim that he was pressured by his attorney to plead
6 guilty does not establish a fair and just reason for a plea withdrawal (Gov. Opp. at 10-
7 12.); (3) Mr. Reodica's claim that he was unprepared to plead guilty does not establish a
8 fair and just reason for a plea withdrawal because he was not caught unaware; (Gov. Opp.
9 at 12.); and that (4) Mr. Reodica's failure to timely file his motion further indicates that
10 there is no fair and just reason to justify the plea withdrawal. (Gov. Opp. at 14-15.) The
11 Government has inaccurately parsed out several of Mr. Reodica's arguments and has also
12 misapplied the "fair and just reason" legal standard. As such, defense respectfully
13 submits its Reply arguments and requests that the Court grant Mr. Reodica's Motion to
14 Withdraw His Guilty Plea.

15 **II. DEFENDANT'S REPLY ARGUMENTS**

16 **A. MR. REODICA HAS ARTICULATED A "FAIR AND JUST" REASON
17 TO WITHDRAW HIS PLEA BASED ON THE CUMULATIVE EFFECT
18 OF NUMEROUS FACTORS**

19 In Mr. Reodica's Original Petition to Withdraw His Guilty Plea [Hereinafter
20 "Original Petition"] and Supplemental Motion to Withdraw His Guilty Plea [Hereinafter
21 "Supplemental Motion"], Mr. Reodica has not argued that each factor, taken in isolation,
22 constitutes a "fair and just" reason for his plea withdrawal. Fed.R.Crim.P.11(d)(2)(B).

1 As such, the Government's analysis of each factor, in isolation, is not helpful to the
 2 ultimate determination of whether a "fair and just reason" exists for the plea withdrawal.
 3 Rather, as the government later acknowledges in its Opposition, Mr. Reodica has argued
 4 that each factor considered together, under a totality of the circumstances, constitutes a
 5 "fair and just" reason for the plea withdrawal due to the cumulative effect of these factors
 6 on the voluntariness of his plea. (Gov. Opp. at 12: 18-19.) Further, as previously argued
 7 in the Defendant's Supplemental Motion, the Ninth Circuit has held that the "fair and just
 8 reason" plea withdrawal standard should be "applied liberally." *United States v. Nagra*,
 9 147 F.3d 875, 880 (9th Cir. 1998). In sum, the fact that Mr. Reodica was experiencing
 10 physical and emotional distress at the time of the plea, in combination with the effects of
 11 his medication, and the negative opinion of counsel about his success at trial, had the
 12 cumulative effect of compromising his judgment and ability to appreciate the nature and
 13 the consequences of his plea.

17 **B. THE GOVERNMENT'S ARGUMENT THAT MR. REODICA WAS
 18 "NOT CAUGHT UNAWARE" OF THE GUILTY PLEA HEARING ON
 19 OCTOBER 5, 2015 IS BASED ON SPECULATION AND SHOULD NOT
 BE GIVEN WEIGHT**

20 In its Opposition, the government has also argued that Mr. Reodica "was not
 21 caught unaware that he would be pleading guilty on October 5, 2015." (Gov. Opp. at 12:
 22 9-11.)¹ The Government further attached Exhibit 3—an email from Mr. Callahan dated
 23 October 4, 2015—to supports its contention that Mr. Reodica knew he would be pleading

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 26 ¹"Rather than being a complete surprise to him (Supplemental Motion at 4, 6, 10), defendant's guilty plea was the
 27 result of conversations with his attorney, which most assuredly took place at least the day before the guilty plea..."
 28 Gov. Opp. at 13:7-10.)

1 guilty the next day, October 5, 2015. However, this argument is misguided because it is
2 based on speculation and assumption.

3 First, in the attached email, Mr. Callahan wrote it *appears* that the client is willing
4 to resolve the matter which indicates ambiguity on the client's part and not a readiness to
5 plead guilty the next day. (Gov. Opp. at Exh. 3.) Second, the government's argument
6 assumes, without any additional evidence, that Mr. Callahan and Mr. Reodica had a
7 conversation about pleading guilty the same day as the email was sent. Third, the
8 government's argument assumes, without any additional evidence, that Mr. Callahan was
9 able to speak to Mr. Reodica, before Court the next morning, to convey that he would be
10 proceeding with a change of plea hearing. Notably, this email exchange was sent over
11 the weekend, on Sunday October 4, 2015.

14 The details and circumstances surrounding this email from October 4, 2015, are
15 simply unknown and cannot, and should not, be inferred from the email exchange. As
16 such, the government's argument that Mr. Reodica knew/was ready for a change of plea
17 hearing on the morning of October 5, 2015, is based on speculation, and assumption, and
18 should not be given weight. Further, while the Court did provide a lengthy recess on
19 October 5, 2015, before proceeding with the open plea, this pause in the proceedings did
20 not lessen the overwhelming effects of the other problematic factors at play: Mr.
21 Reodica's physical illness, his mental/emotional distress, and the negative opinion of his
22 counsel. All of these factors in combination still unduly affected Mr. Reodica's ability to
23 understand the nature and consequences of his plea.

C. THE GOVERNMENT'S ARGUMENT REGARDING TIMELINESS IS CONTRADICTED BY MR. REODICA'S DECLARATIONS AND HIS EMAIL FROM DECEMBER 4, 2015

The government has also argued that Mr. Reodica's Motion is untimely because:

1) Mr. Reodica's Original Petition was dated February 28, 2016 (just under 5 months after the plea); and 2) there is no corroboration of Mr. Reodica's intent to withdraw his plea on October 6, 2015, the day after the plea. As an initial matter, Mr. Reodica's original submitted declaration is sufficient evidence for the Court to consider regarding the timing of his desire to withdraw his plea. (See Dec. at 28.) Additionally, although Mr. Reodica first made his requests orally to counsel, Exhibit A—attached to this Reply—is an email dated December 4, 2015, where Mr. Reodica clearly expresses his request to withdraw his Guilty Plea and his request for Mr. Callahan to file the Motion in writing. This email from Mr. Reodica to Mr. Callahan unequivocally states, “2. Please consider this my instruction for you to prepare and submit a Motion to Withdraw my Guilty Pleas during the Oct 5-6, 2015 court dates in the Court of Hon Judge S. Otero.” (See Defendant's Reply, Exh. A.) Lastly, and perhaps most importantly, delay/timeliness of a motion to withdraw is not a dispositive factor. Specifically, the Ninth Circuit “has never held that delay standing alone militates against permitting withdrawal of a plea. Delay itself does not make an otherwise valid reason for withdrawal any less ‘fair’ or ‘just.’” *United States v. Garcia*, 401 F.3d 1008, 1013 (9th Cir. 2005). The Ninth Circuit arrived at this conclusion because delay may be attributed to factors outside the control of the defendant, which are wholly irrelevant to the legitimacy of the defendant's reasons

1 for wanting to withdraw his plea, such as the amount of time it takes a busy attorney to
2 research and file a motion to withdraw a guilty plea. *Garcia*, 401 F.3d at 1013.

3 In the instant case, these type of factors outside of Mr. Reodica's control were at
4 play. First, Mr. Reodica has been in custody at MDC since November 2012, with a more
5 limited ability to communicate immediately with his counsel in order to convey his
6 intentions. Second, Mr. Callahan is a busy attorney with a substantial caseload. Third,
7 Mr. Reodica and his counsel went back and forth for some time over whether to proceed
8 with this Motion. None of these factors, which delayed the filing of the instant Motion,
9 bear on the legitimacy of Mr. Reodica's reasons for wanting to withdraw his plea or
10 change the fact that he wished to withdraw his plea the day after he entered it. In
11 conclusion, the government's argument regarding delay/timeliness should not be given
12 weight.

13 **D. MR. REODICA DOES NOT NEED TO PRESENT NEW EVIDENCE IN
14 ORDER TO MERIT A PLEA WITHDRAWAL**

15 In its Opposition, the Government has emphasized that Mr. Reodica was aware of
16 each of the argued factors at the time of the plea. (Gov. Opp. at 9: 19-20, "...these
17 purported reasons were ones of which defendant was well aware at the time of his guilty
18 pleas.") However, an inadequate Rule 11 plea colloquy/issue with the voluntariness of a
19 plea, is an independent, sufficient ground to merit a plea withdrawal. *See United States v.*
20 *Harpham*, No. 2:11-CR-00042-JLQ, 2:15-cv-125-JLQ, 2011 U.S. Dist. LEXIS 148069,
21 at *10 (E.D. Wash. Mar. 20, 2016) ("The Ninth Circuit has given as examples of fair and
22 just reasons: 1) inadequate Rule 11 plea colloquies; 2) newly discovered evidence; 3)
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1 intervening circumstances; 4) erroneous or inadequate legal advice; or 5) “any other
2 reason for withdrawing the plea that did not exist when the defendant entered his plea.”)
3 As such, under the circumstances of the instant case, the law does not require for Mr.
4 Reodica to present new evidence, or new factors, which did not exist at the time of plea.
5 Fed.R.Crim.P.11(d)(2)(B). Further, by its very nature, any argument based on an
6 inadequate plea colloquy/voluntariness of the plea would necessarily point to factors
7 which existed at the time of the plea but which rendered the plea insufficient, unknowing,
8 and/or involuntary. As such, counsel respectfully submits that Mr. Reodica has met his
9 burden of providing a “fair and just reason” for his plea withdrawal and that his Motion
10 should be granted.

13 **III. CONCLUSION**

14 In conclusion, counsel respectfully requests that the Court grant Mr. Reodica’s
15 Motion to Withdraw his Guilty Plea because the totality of the circumstances demonstrate
16 a “fair and just reason” for withdrawing his plea.

18 Dated: November 7, 2016

19 /s/ Karen L. Goldstein
20 Law Offices of Karen L. Goldstein
21 Attorney for Defendant, Eminiano Reodica

Exhibit A

TRULINCS 64016112 - REODICA, EMINIANO A JR - Unit: LOS-F-N

FROM: Callahan, Richard
TO: 64016112
SUBJECT: RE: PSR
DATE: 12/04/2015 09:21:06 PM

Before you send your emails to the government and the judge, please let me discuss this issue with you. I wish you had told me you planned to to this today when Randy and I were meeting with you.. We will be in to see you Monday or Tuesday.

RMC

EMINIANO A JR REODICA on 12/4/2015 6:35:26 PM wrote

To: Mr. Richard M. Callahan Jr., Defense counsel
From: Eminiano A. Reodica, Jr., Defendant
Re: CR 94 121 SJO

Dear Mr. Richard M. Callahan:

1. Please consider this my instruction for you to cancel the appointment you set up with the Probation Officer, for me, to start the process for the Preparation of the Presentencing Report (PSR);
2. Please consider this my instruction for you to prepare and submit a Motion to Withdraw my Guilty Pleas during the Oct 5-6, 2015 court dates in the Court of Hon Judge S.. James Otero;
3. I am sending a copy of these instructions to the US Attorney's Office and the Judge today, as well.

Very truly yours,

Eminiano A. Reodica, Jr.
Reg. 64016-112



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EMINIANO REODICA, PETITIONER,
vs.
UNITED STATES, RESPONDENT.

CERTIFICATE OF SERVICE

I, Carlton F. Gunn, hereby certify that on this 11th day of December, 2018, a copy of the Petitioner's Appendix, Volume 1 of 2, was mailed postage prepaid, to the Solicitor General of the United States, Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, counsel for the Respondent.

Respectfully submitted,

December 11, 2018

s/ Carlton F. Gunn
CARLTON F. GUNN
Attorney at Law