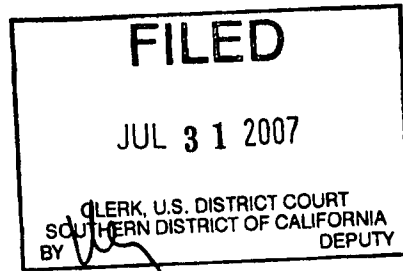


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7 Attorney for Plaintiff
United States of America



9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 HARRY MAXWELL RADY,)
15 Defendant.)
16

Criminal Case No. 07CR 2018-BEN

PLEA AGREEMENT

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through
18 its counsel, Karen P. Hewitt, United States Attorney, and Alessandra P. Serano, Assistant United States
19 Attorney, and defendant, HARRY MAXWELL RADY (hereinafter "defendant"), with the advice and
20 consent of Robert Grimes, Esq., counsel for defendant, as follows:

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I

THE PLEA

Defendant agrees to waive indictment and plead guilty to an information charging that:

Starting in or about February, 2007 through on or about May 1, 2007, within the Southern District of California, and elsewhere, defendant HARRY MAXWELL RADY, not being a licensed importer, manufacturer, dealer, and collector, did willfully receive in the State of California, where he then resided, firearms, to wit, three (3) Romanian AK-47 rifles (serial Nos. BF328268, AK063084, HE415477), one (1) Smith & Wesson model 340PD .357 pistol revolver (serial no. DAE9312), two (2) FNH 57, 5.7x28mm handguns (serial nos. 386134417, 386134418), two (2) FNH PS 90 5.7x28mm rifle (serial nos. 00FN043496 and FN044219), one (1) HK91 .308 rifle (serial no. A042513), and one (1) FN 5.7 handgun (serial no. 386138134), the firearms having been purchased by JASON CARL BORNHOLDT outside the State of California; in violation of Title 18, United States Code, Sections 922(a)(3) and 924(a)(1)(D).

The Government agrees to not further prosecute Defendant for the conduct directly associated with the conduct surrounding this indictment. In addition, Defendant agrees to forfeit and abandon to the United States all right, title, and interest in the assets described in Addendum "A" [attached] to this agreement. Defendant agrees that he will not contest or assist any other person or entity, including his spouse, in contesting the administrative or judicial forfeiture and/or the abandonment of the assets listed in Addendum A. Furthermore, Defendant agrees to execute all documents requested by the United States in order to effectuate the forfeiture or abandonment of the afore-described items. Defendant further waives notice of all proceedings taken by the United States in connection with the disposition or liquidation of the afore-described items. Defendant warrants and represents as a material fact that he is the sole owner of all the described items and that no other person or entity has any right or claim to the same.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. The defendant was not a licensed as a firearms dealer, importer, manufacturer or collector; and

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2. The defendant willfully received in the state in which the defendant resided firearms that defendant purchased or otherwise obtained outside that state.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS


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

- 1. Starting in or about February 2007 through on or about May 1, 2007, defendant did receive the firearms listed in the count from Jason Carl Bornholdt at Defendant's residence in La Jolla, California.
- 2. Defendant knew that the firearms listed in the count were purchased or otherwise obtained from outside the state of California.
- 3. Defendant agreed to pay Jason Bornholdt money and did pay some money, to wit, at least \$10,000.00 in exchange for these firearms.
- 4. Defendant is not licensed as a firearms dealer, importer, manufacturer or collector.
- 5. At the time defendant received the firearms listed in the count, defendant was a resident of California and not a resident of Arizona.

III
PENALTIES

Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:

- A. a maximum of 5 years in prison;
- B. a maximum \$250,000.00 fine;
- C. a mandatory special assessment of \$100.00; and
- D. a term of supervised release of no more than 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in

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revocation of supervised release, requiring Defendant to serve in prison all or part of the term of supervised release.

E. forfeiture of all firearms and ammunition involved in or used in Defendant's violations.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

- A. continue to plead not guilty and require the United States to prove the elements of the crimes beyond a reasonable doubt;
- B. a speedy and public trial by jury;
- C. the assistance of counsel at all stages of trial;
- D. confront and cross-examine adverse witnesses;
- E. present evidence and to have witnesses testify on behalf of defendant; and
- F. not testify or have any adverse inferences drawn from the failure to testify.

V

WAIVER OF EIGHTH AMENDMENT RIGHTS AS TO THE FORFEITURE

Defendant knowingly and voluntarily waives any rights and defenses Defendant may have under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution to the forfeiture of property in this proceeding or any related civil or administrative proceedings.

VI

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

The United States represents that any information establishing the factual innocence of defendant known to the undersigned prosecutor in this case has been turned over to defendant. The United States will continue to provide such information establishing the factual innocence of defendant.

1 Defendant understands that if this case proceeded to trial, the United States would be
2 required to provide impeachment information relating to any informants or other witnesses. In
3 addition, if defendant raised an affirmative defense, the United States would be required to provide
4 information in its possession that supports such a defense. Defendant acknowledges, however, that
5 by pleading guilty defendant will not be provided this information, if any, and Defendant also
6 waives the right to this information. Finally, defendant agrees not to attempt to withdraw this guilty
7 plea or to file a collateral attack based on the existence of this information.

8
9 **VII**

10 **DEFENDANT'S REPRESENTATION THAT**
11 **GUILTY PLEA IS KNOWING AND VOLUNTARY**

12 Defendant represents that:

- 13 A. Defendant has had a full opportunity to discuss all the facts and circumstances of this
14 case with defense counsel, and has a clear understanding of the charges and the
15 consequences of this plea;
- 16 B. No one has made any promises or offered any rewards in return for this guilty plea,
17 other than those contained in this plea agreement or otherwise disclosed to the court;
- 18 C. No one has threatened defendant or defendant's family to induce this guilty plea; and
- 19 D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for
20 no other reason.

21 **VIII**

22 **AGREEMENT LIMITED TO U.S. ATTORNEY'S**
23 **OFFICE SOUTHERN DISTRICT OF CALIFORNIA**

24 This plea agreement is limited to the United States Attorney's Office for the Southern
25 District of California, and cannot bind any other federal, state or local prosecuting, administrative, or
26 regulatory authorities, although the United States will bring this plea agreement to the attention of
27 other authorities if requested by defendant.

28 **IX**

SENTENCING GUIDELINES

Defendant understands the sentence imposed will be based on the factors set forth in 18
U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge



1 must consult the United States Sentencing Guidelines (Guidelines) and take them into account.
2 Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines
3 are only advisory, not mandatory, and the court may impose a sentence more severe or less severe
4 than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction.
5 Defendant understands further that the sentence cannot be determined until a presentence report has
6 been prepared by the U.S. Probation Office and defense counsel and the Government have had an
7 opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be
8 construed as limiting the Government's duty to provide complete and accurate facts to the district
9 court and the U.S. Probation Office.

10 **X**

11 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

12 This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).
13 Defendant understands that the sentence is within the sole discretion of the sentencing judge. The
14 Government has not made and will not make any representation as to what sentence defendant will
15 receive. Defendant understands that the sentencing judge may impose the maximum sentence
16 provided by statute, and is also aware that any estimate of the probable sentence by defense counsel
17 is a prediction, not a promise, and is **not binding on the Court**. Likewise, the recommendation
18 made by the Government is not binding on the Court, and it is uncertain at this time what defendant's
19 sentence will be. Defendant also has been advised and understands that if the sentencing judge does
20 not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to
21 withdraw the plea.

22
23 **XI**

24 **PARTIES' SENTENCING RECOMMENDATIONS**

25 **A. BASE OFFENSE LEVEL AND ADJUSTMENTS**

26 Although the parties understand that the Guidelines are only advisory and just one of the
27 factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will
28



1 jointly agree that the Government will recommend the following Base Offense Level, Specific
2 Offense Characteristics, Adjustments and Departures (if applicable) under the Guidelines:

3	1.	Base Offense Level [USSG § 2K2.1(a)(7)]	12
4	2.	Specific Offense Characteristic [§2K2.1(b)(1)(B)] (Number of firearms 8-24)	+4
5	3.	Acceptance of Responsibility [USSG § 3E1.1]	-3
6			<hr/>
7		Resulting Offense Level	13

8 B. ACCEPTANCE OF RESPONSIBILITY

9 Notwithstanding paragraph A.3 above, the United States will not recommend any adjustment
10 for Acceptance of Responsibility if defendant:

- 11 1. Fails to admit a complete factual basis for the plea at the time it is entered, or
- 12 2. Denies involvement in the offenses, gives conflicting statements about that
13 involvement, or is untruthful with the United States, the court or probation
14 officer, or
- 15 3. Fails to appear in court, or
- 16 4. Engages in additional criminal conduct, or
- 17 5. Attempts to withdraw the plea, or
- 18 6. Refuses to abide by any lawful court order.
- 19 7. Contests the forfeiture or assists any third party in contesting the forfeiture of
20 properties seized and forfeited/abandoned in connection with this case, or
- 21 8. Fails to execute abandonment forms or consent forms as requested by the
22 United States.

21 C. ADJUSTMENTS

22 The parties agree that Defendant may request further adjustments. The United States,
23 however, may oppose any such requests made by Defendant other than those adjustments already
24 listed in Section XI, Paragraph A.

25 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

26 There is no agreement as to defendant's Criminal History Category.

27
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1 E. DEPARTURES

2 The parties agree that Defendant may request further downward departures, including any
3 criminal history departures under § 4A1.3. However, defendant may not file or argue substantive
4 motions, including those described in Fed. R. Crim. P. 12, under this subsection. The parties agree
5 further that the Government may oppose any downward departure not set forth in Section X,
6 paragraph A above.

7 F. "RELEVANT CONDUCT" INFORMATION

8 Defendant agrees that the facts in the "factual basis" paragraph of this agreement are true,
9 and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and
10 circumstances of the offense under 18 U.S.C. §3553(a)(1).

11 G. THE GOVERNMENT'S RECOMMENDATION REGARDING CUSTODY

12 The parties agree that the Government will recommend that defendant be sentenced to the
13 **low end** of the advisory guideline range as calculated by the Government pursuant to this agreement.
14 However, if the Court adopts an offense level or downward adjustment or departure below the
15 Government's recommendations in this plea agreement, the Government will recommend a sentence
16 as near as possible to what the sentence would have been if the Government's recommendations had
17 been followed.

18 H. SPECIAL ASSESSMENT/FINE/RESTITUTION

19 1. Special Assessment. The parties will jointly recommend that defendant pay a
20 special assessment in the amount of \$100.00 to be paid forthwith at time of sentencing. The special
21 assessment shall be paid through the office of the Clerk of the District Court by bank or cashier's
22 check or money order made payable to the "Clerk, United States District Court."

23 2. Fine/Restitution. The parties do not recommend imposition of a fine or
24 a restitution order.

25 I. SUPERVISED RELEASE

26 If the Defendant is placed on a term or supervised release (18 U.S.C. § 3583), Defendant
27 shall not seek to modify the terms or length of supervised release without the advance consent of the
28 United States.



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XII

FORFEITURE

Defendant consents to the forfeitures as described in paragraph I above. Defendant warrants and represents as a material fact that he is the sole owner of the afore-described items of property and that no other person or entity has any claim or interest in them. Defendant consents to the criminal and/or civil and/or administrative forfeiture of all the items described and waives all notice of all forfeiture action(s) taken by the United States with respect to the same.

XIII

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, unless the Court imposes a custodial sentence greater than the high end of the guideline range (or statutory mandatory minimum term, if applicable) recommended by the Government pursuant to this agreement at the time of sentencing. If the custodial sentence is greater than the high end of that range, the defendant may appeal, but the Government will be free to support on appeal the sentence actually imposed. If defendant believes the Government's recommendation is not in accord with this agreement, defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

XIV

CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT THE UNITED STATES TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA

This plea agreement is based on the understanding that, prior to defendant's sentencing in this case, defendant has not committed or been arrested for any offense not known to the United States prior to defendant's sentencing. This plea agreement is further based on the understanding that defendant has committed no criminal conduct since defendant's arrest on the present charges, and that defendant will commit no additional criminal conduct before sentencing. If defendant has engaged in or engages in additional criminal conduct during this period, or breaches any of the terms

1 of any agreement with the United States, the United States will not be bound by the
2 recommendations in this plea agreement, and may recommend any lawful sentence. In addition, at
3 its option, the United States may move to set aside the plea.

4
5 **XV**

6 **ENTIRE AGREEMENT**

7 This plea agreement embodies the entire plea agreement between the parties and supersedes
8 any other plea agreement, written or oral.

9 **XVI**

10 **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

11 No modification of this plea agreement shall be effective unless in writing signed by all
12 parties.

13 **XVII**

14 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

15 By signing this plea agreement, defendant certifies that defendant has read it (or that it has
16 been read to defendant in defendant's native language). Defendant has discussed the terms of this
17 plea agreement with defense counsel and fully understands its meaning and effect.

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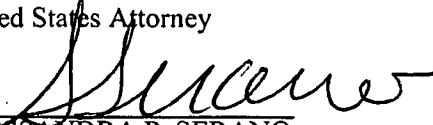
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XVIII

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT
United States Attorney



ALESSANDRA P. SERANO
Assistant U.S. Attorney

7/31/07
DATED



ROBERT GRIMES
Attorney for Defendant

7-31-07
DATED

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



HARRY MAXWELL RABY
Defendant

7/31/07
DATED

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ADDENDUM "A"

(United States v. HARRY MAXWELL RADY, Case No.07CR ~~2018~~ BEN)

Items to be forfeited and abandoned by Defendant RADY:

1. Two (2) H&K, model USP, .45 caliber pistols (serial nos. 25-096642, 25-091741)
2. 55 rounds of .45 caliber ammunition taken from magazines for the two (2) H&K, model USP, .45 caliber pistols
3. One (1) FN model 57, 5.7x28mm pistol (386138134)
4. One (1) H&K, model USP Compact, .45 caliber pistol (29-037759)
5. One (1) H&K model 91, .308 caliber rifle (A042513)
6. One (1) Springfield Armory, model M1A, .30 caliber rifle (165275)
7. Two (2) Benelli model M4LE 12 gauge shotguns (Y009256, Y009152)
8. One (1) Benelli model M3 Super 90, 12 gauge shotgun (CS00300)
9. One (1) AMT model Hunter Edition, .22 caliber rifle (CS00300)
10. Two (2) FN model 57 5.7x28mm pistols (386134417, 386134418)
11. One (1) FN model PS90 5.7x28mm rifle (FN044219)
12. One (1) Smith & Wesson model 340PD .357 caliber revolver (DAE9312)
13. Three (3) ROMARM/Cugir, model GP WASR-10, 7.62x39mm (BF328268, AK063084, HE415477)
14. One (1) FN, model PS90, 5.7x28mm rifle (FN043496)
15. One (1) H&K, USP Compact, .45 caliber pistol, (25-107051)
16. 22 rounds of .45 caliber ammunition in two magazines
17. Nine assorted pyrotechnic devices
18. One (1) U.S. military M18 smoke grenade

