

DEPARTMENT OF THE NAVY  
WESTERN JUDICIAL CIRCUIT  
NAVY AND MARINE CORPS TRIAL JUDICIARY  
NAVAL BASE SAN DIEGO, CALIFORNIA 92136

U N I T E D S T A T E S

v.

[REDACTED]  
BMC/E-7 USN

SPECIAL COURT-MARTIAL

MEMORANDUM  
OF  
PRETRIAL AGREEMENT

(Part I)

I, [REDACTED], USN, the accused in a special court-martial, in exchange for good consideration and after thorough consultation with my defense counsel, do fully understand and agree to the following terms and conditions:

1. I agree to enter pleas of GUILTY as indicated below. I do so fully understanding that the Convening Authority may approve any sentence adjudged by the court-martial, but shall order executed only that sentence which does not exceed the lesser of the sentence contained in Part II of this agreement (the Maximum Sentence Limitation Appendix) or the sentence adjudged by this court-martial.
2. This agreement (Parts I and II) constitutes all the conditions and understandings of both the Government and myself regarding the pleas in this case. There are no other agreements, written or otherwise.
3. I understand, and the sentence limitation portion of this agreement addresses, each of the following distinct parts of the sentence that may be adjudged in this case: (1) punitive discharge, (2) confinement and/or restraint, (3) forfeiture and/or fine, (4) reduction in pay grade, and (5) any other lawful punishment.
4. I am satisfied with my defense counsel, [REDACTED], JAGC, USN, in all respects and consider her qualified to represent me at this court-martial.
5. I am entering into this agreement freely and voluntarily. Nobody has made any attempt to force or coerce me into making this agreement or into pleading guilty.
6. I have been fully advised by my defense counsel of, and I fully understand and comprehend the meaning and effect of, my guilty pleas and all attendant effects and consequences,

including the possibility that I may be processed for administrative discharge from the United States Navy.

7. I understand that I may ask permission to withdraw any of my pleas of guilty at any time before they are actually accepted by the military judge. I also understand that I may ask to withdraw any of my pleas of guilty after they have been accepted, but before sentence is announced, and the military judge may, at his/her discretion, permit me to do so.

8. I understand that this pretrial agreement may become null and void, and the convening authority can withdraw from this agreement, in the event that any of the following occur:

(1) I fail to plead guilty as required by this agreement at trial or at a rehearing should one occur;

(2) The court refuses to accept any of my pleas of guilty at trial or at a rehearing should one occur;

(3) The court sets aside any of my pleas of guilty for whatever reason, including upon my request, before sentence is announced at trial or at a rehearing should one occur;

(4) I fail to satisfy any term of this agreement.

9. I understand that if this agreement becomes null and void, then my offer to plead guilty and enter into this agreement cannot be used against me in any way in determining whether I am guilty or not guilty of the charges alleged against me at this court-martial or in determining an appropriate sentence.

10. I understand that if the approved sentence includes a punitive discharge or confinement in excess of 90 days (or 3 months), whether the sentence is suspended or not, Article 58a of the UCMJ and § 0152 of the JAGMAN require that I suffer automatic administrative reduction in pay grade to the lowest enlisted paygrade, E-1, unless the Convening Authority takes action to remit or suspend the automatic reduction.

11. I understand that if the adjudged sentence includes either a punitive discharge and confinement, or confinement in excess of six months, whether the sentence is suspended or not, Article 58b of the UCMJ requires the automatic imposition of forfeitures of 2/3 pay per month due during any period of confinement served, unless the Convening Authority takes action to waive or defer the automatic forfeiture provision. Forfeitures, whether adjudged or automatic, take effect upon the convening authority's action in this case or 14 days after sentence is adjudged, whichever is earlier. I understand that I may request in writing that the convening authority defer execution of forfeitures until the convening authority takes action in this case. I also understand that I may request that automatic forfeitures be waived by the convening authority for a period up to six (6) months from the

date of the convening authority's action. Finally, I understand that if I am held in confinement beyond my End of Active Obligated Service (EAOS) date, then I will not receive any pay or allowances by operation of law, regardless of the terms of this agreement.

12. I understand that should I commit any misconduct after the signing of this pretrial agreement but before the date of trial, such misconduct may be the basis for the convening authority to unilaterally withdraw from the pretrial agreement, rendering the entire agreement null and void. I further understand that if I commit misconduct on or after the date of trial, but before the date of the convening authority's action, the convening authority may, after first complying with notice and hearing requirements consistent with Article 72, UCMJ and R.C.M. 1109, withdraw from the sentence limitation provisions of this agreement. Should the Convening Authority withdraw from the sentence limitation provisions of this agreement based on misconduct occurring on or after the date of trial but before action is taken in my case, I understand that any provisions in the pretrial agreement relating to suspension of any aspect of my sentence would become null and void in all respects, and that the entire sentence adjudged at my court-martial may be approved and imposed upon me.

13. I also understand that should I commit any misconduct after the date of the convening authority's action, or violate any of the conditions of suspension stated in this agreement during the period in which any part of my sentence is suspended, the Convening Authority may, after complying with the procedures set forth in R.C.M. 1109, vacate any periods of suspension agreed to in this pretrial agreement or as otherwise approved by the Convening Authority, and that previously suspended portion of my sentence could be imposed upon me.

14. I understand that I may be placed on appellate leave under the provisions of Article 76a of the UCMJ, if the sentence, as approved, includes an unsuspended punitive discharge. I understand that an individual placed into an appellate leave status will normally not receive any pay or allowances. I further understand that receipt of pay and/or allowances while in an appellate leave status will depend on the amount of accrued leave I have accumulated and chose to use, and on the sentence awarded by this court-martial.

My defense attorney has advised me that any punitive discharge that is adjudged and ultimately approved in my case may adversely affect my ability to receive retirement pay and any and all other benefits accrued as a result of my military service.

15. In the event that any provision of this Agreement is found to be invalid or unenforceable by the courts of appeal, the remaining provisions shall remain in full force and effect to the

degree that they may be enforced consistent with the purposes of this Agreement.

16. Specially Negotiated Provisions.

As consideration for this agreement, and after having fully discussed the issue with my defense counsel:

a. I agree to request trial and sentencing by military judge alone, and waive my right to a trial by members, including enlisted members.

b. I understand and agree that, in return for my plea(s) of guilty, and following the military judge's acceptance of my plea(s) as set forth below, the convening authority will withdraw the charges and specifications to which I have pled not guilty. After announcement of the sentence by the military judge, the withdrawn language and/or charges and specifications will be dismissed by the convening authority without prejudice. Absent further misconduct on the part of the accused or the accused's failure to comply with a provision of this agreement, the government does not intend to revive these charges and specifications.

c. I agree to waive any administrative discharge board that is based on any act or omission reflected in the charge(s) and specification(s) that is/are the subject of this Agreement on January 11, 2014 or any date thereafter that is convenient for the Command. I understand that my administrative discharge will be characterized as Honorable, but that my retirement paygrade will be no higher than E-5. I fully understand the nature and purpose of an Administrative Discharge Board, and the rights that I would have at such a Board. Furthermore, I agree to complete NAVPERS Form 1910, Administrative Separation Processing Notice Form and a letter, as in paragraph 6 MILPERSMAN 1910-166, requesting transfer to the Fleet Reserve in paygrade E-5, at least three (3) days prior to the date of my sentencing hearing.

d. I agree to make restitution by cashier's check or money order made payable in the following amounts to the economic victims of my misconduct, to wit: \$800.00 [REDACTED]; \$400.00 to [REDACTED]; and \$100.00 to [REDACTED], prior to the date of trial. I expressly represent that I will have the economic means to make restitution prior to the date of trial. The cashier's check or money order will be delivered to the trial counsel at least one day prior to the date of trial. I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to withdraw from this agreement, rendering it null and void.

e. I agree to enter into a stipulation of fact, which describes the facts and circumstances surrounding the offenses to which I am pleading guilty. I understand that the failure of the parties to reach a mutually agreed upon stipulation of fact may

result in either side withdrawing from this agreement. I further agree not to object to the mutually agreed upon stipulation's admission during the providence inquiry/on the merits/ and/or during the pre-sentencing proceeding.

f. I agree not to request, at Government expense, the presence of any witness. This provision does not interfere with my ability to present an effective case in extenuation and mitigation.

g. I agree and am fully prepared to go to trial, and offer to go to trial, no later than 3 December 2013. I understand that I will not be deemed to have breached this agreement if the judiciary cannot schedule my trial by this specific date.

h. I agree to waive all motions except those that are otherwise non-waivable pursuant to R.C.M. 705(c)(1)(B). I have not been compelled to waive my right to due process, the right to challenge the jurisdiction of the court-martial, the right to a speedy trial, the right to raise the issue of unlawful command influence, or any other motion that cannot be waived. I have no motions to bring and I am not aware of any motion that was waived pursuant to this provision.

i. I and the Government agree not to object to service record documents, letters, statements, or any other documents provided in discovery to counsel on the basis of foundation, hearsay, authenticity, best evidence, or the Confrontation Clause of the Sixth Amendment.

j. I agree not to object to the form of the presentation of witness testimony. I understand that this means the Government may present witness testimony telephonically or by any other means, including written statements, during the presentencing hearing of this court-martial. The Government agrees not to object to my use of telephonic testimony or testimony by any other means, including written statements, during the presentencing hearing of this court-martial provided that such written statements are provided to trial counsel at least 3 days prior to the trial date.

PLEAS OF THE ACCUSED

CHARGE

PLEAS

Charge I: Violation of Article 90	GUILTY
Specification: Viol. no contact order	GUILTY
Charge II: Violation of Article 92	GUILTY
Specification 1: frat by borrow \$100 fr [REDACTED]	GUILTY
Specification 2: frat by borrow \$600 fr [REDACTED]	GUILTY
Charge III: Violation of Article 121	NOT GUILTY
Specification 1: steal \$200 fr [REDACTED]	NOT GUILTY
Specification 2: steal \$400 fr [REDACTED]	NOT GUILTY
Specification 3: steal \$300 fr [REDACTED]	NOT GUILTY
Specification 4: steal \$300 fr [REDACTED]	NOT GUILTY
Specification 5: steal \$100 fr [REDACTED]	NOT GUILTY
Charge IV: Violation of Article 127	NOT GUILTY
Specification 1: extort money fr wife	NOT GUILTY
Charge V: Violation of Article 134	GUILTY
Specification 1: fail to pay \$600 [REDACTED]	GUILTY
Specification 2: fail to pay \$100 [REDACTED]	GUILTY
Add. Charge: Violation of Article 92	GUILTY
Specification: frat by borrow \$400 fr [REDACTED]	GUILTY

By my signature below I acknowledge that I have read this agreement completely, discussed it with my counsel, understand it in all respects, and am prepared to abide by its terms.

25 NOV 2013

Date

[REDACTED]

[REDACTED], BMC, USN, Accused

26 NOV 13

Date

[REDACTED]

[REDACTED] LT, JAGC, USN Defense Counsel

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

26 Nov 13

Date

[REDACTED]

BY AUTHORITY OF THE CONVENING  
AUTHORITY PURSUANT TO R.C.M. 705

Trial Counsel, LT, JAGC, USN

[REDACTED] CDR, USN

CO, Navy Region Southwest Transient Personnel Unit