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By:

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Attorney for the People of Guam

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

Plaintiff,

vs.

KYLE AUSTERO PABLO,
DOB: 11/29/1987

Defendant.

S.C. Cr. Nos.: CF-0055-17 & CF-0090-17
GPD Case No. 17-01926 / 17-01868 / 17-02188 / 17-03261 / 17-03270 / 16-24730 / 17-04905

PLEA AGREEMENT

Pursuant to Title 8 Guam Code Annotated § 60.80, the defendant, **KYLE AUSTERO PABLO**, represented by **TERENCE TIMBLIN, ESQ.**, and the People of Guam represented by the Attorney General through **JAMES C. COLLINS, ESQ.**, enter into the following plea agreement:

1. The defendant, having been advised, understands the following:
 - a. the nature of the charge and its elements to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; the right to consult with and be represented by an attorney at every stage of these proceedings;
 - b. The right to consult with and be represented by an attorney at every stage of these proceedings;

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- 1 c. the right to plead not guilty, the right to confront and cross-examine witnesses, and
2 the right against self-incrimination;
3 d. that by pleading guilty to the charge the right to a jury trial is waived; and upon
4 acceptance of the guilty plea by the Court, defendant stands convicted just as though
5 convicted by a jury;
6 e. that if defendant pleads guilty, the Court may ask questions about the offense charged,
7 and if defendant answers these questions on the record, and in the presence of
8 Defendant's attorney, the answers later may be used against Defendant;
9 f. That Defendant has a right to prosecution by indictment or preliminary hearing and,
10 if this right is waived, Defendant may be prosecuted by an information filed by the
11 prosecutor; and.
12 g. that if the Defendant is an alien, Defendant's guilty plea may have immigration
13 consequences, including deportation, and that the defendant has been counseled as to
14 any impact upon Defendant's immigration status.

15 2. Defendant voluntarily, and without coercion or promises apart from this Plea
16 Agreement, agrees to enter *pleas* to the charges of RETAIL THEFT (As a Misdemeanor), a violation
17 of 9 GCA §§ 43.91 (a) & 43.20 (c), TWO CHARGES, as found in the Indictment filed in CF-0055-
18 17 and to the charges of RETAIL THEFT (As a Third Degree Felony), a violation of 9 GCA §§
19 43.91 (a) & 43.20 (b) and POSSESSION OF A SCHEDULE TWO CONTROLLED SUBSTANCE
20 (As a Third Degree Felony), a violation of 9 GCA §§ 67.401.2 (a) & (b), as found in the Indictment
21 filed in CF-0090-17. Pursuant to 9 GCA §§ 80.30 (c) & 80.50 (b), these Third Degree Felony
22 offenses carry sentences of no more than five (5) years incarceration and a fine of no more than five
23 thousand dollars (\$5,000). Pursuant to 9 GCA §§ 80.34 (a) & 80.50 (c), these Misdemeanor offenses
24 carries a sentence of no more than one (1) year incarceration and a fine of one thousand dollars
25 (\$1,000).
26
27
28

1 The charge arises out of the incident described in Guam Police Department Report No. GPD
2 No. 17-02188, 17-01868 & 17-04905 and the facts as follows

3
4 On or about the 21st day of January, 2017, in Guam, the defendant, KYLE AUSTERO
5 PABLO, did unlawfully and knowingly carry away property of MacTech Guam, a retail
6 mercantile establishment, that is a stereo and speakers, offered for sale at MacTech Guam,
7 with the intent of permanently depriving MacTech Guam of the possession, use and benefit
8 of such merchandise without paying the full retail value of such merchandise, the amount
9 involved exceeding fifty dollars (\$50.00) but less than five hundred dollars (\$500.00).

10 On or about the 20th day of January, 2017, in Guam, the defendant, KYLE AUSTERO
11 PABLO, did unlawfully and knowingly carry away property of Benson Guam Enterprises, a
12 retail mercantile establishment, that is a chainsaw and spray paint, offered for sale at Benson
13 Guam Enterprises, with the intent of permanently depriving Benson Guam Enterprises of the
14 possession, use and benefit of such merchandise without paying the full retail value of such
15 merchandise, the amount involved exceeding fifty dollars (\$50.00) but less than five hundred
16 dollars (\$500.00).

17 On or about the 19th day of February, 2017, in Guam, the defendant, KYLE AUSTERO
18 PABLO, did unlawfully and knowingly carry away property of Macy's Department Store,
19 Dededo, a retail mercantile establishment, that is clothing, offered for sale at Macy's
20 Department Store, Dededo, with the intent of permanently depriving Macy's Department
21 Store, Dededo of the possession, use and benefit of such merchandise without paying the full
22 retail value of such merchandise, the amount involved exceeding five hundred dollars
23 (\$500.00) but less than fifteen hundred dollars (\$1500.00).

24 On or about the 19th day of February, 2017, in Guam, the defendant, KYLE AUSTERO
25 PABLO, did unlawfully and knowingly possess a schedule two controlled substance, that is,
26 oxycodone.

27 3. The Defendant understands that to establish a violation of RETAIL THEFT (As a
28 Misdemeanor), as charged pursuant to 9 GCA §§ 43.91 (a) & 43.20 (c), the People must prove each
of the following elements beyond a reasonable doubt:

First: the incident occurred on or about the 21st day of January, 2017, in Guam;

Second: the defendant did carry away property of MacTech Guam, a retail mercantile
establishment, that is a stereo and speakers, offered for sale at MacTech

1 Guam, with the intent of permanently depriving MacTech Guam of the
2 possession, use and benefit of such merchandise without paying the full retail
3 value of such merchandise, the amount involved exceeding fifty dollars
4 (\$50.00) but less than five hundred dollars (\$500.00); and,

5 **Third:** the defendant did so intentionally and knowingly.

6
7 The Defendant understands that to establish a violation of RETAIL THEFT (As a
8 Misdemeanor), as charged pursuant to 9 GCA §§ 43.91 (a) & 43.20 (c), the People must prove each
9 of the following elements beyond a reasonable doubt:

10
11 **First:** the incident occurred on or about the 20th day of January, 2017, in Guam;

12 **Second:** the defendant did carry away property of Benson Guam Enterprises, a retail
13 mercantile establishment, that is a chainsaw and spray paint, offered for sale
14 at Benson Guam Enterprises, with the intent of permanently depriving
15 Benson Guam Enterprises of the possession, use and benefit of such
16 merchandise without paying the full retail value of such merchandise, the
17 amount involved exceeding fifty dollars (\$50.00) but less than five hundred
18 dollars (\$500.00); and,

19 **Third:** the defendant did so intentionally and knowingly.

20 The Defendant understands that to establish a violation of RETAIL THEFT (As a Third
21 Degree Felony), as charged pursuant to 9 GCA §§ 43.91 (a) & 43.20 (b), the People must prove each
22 of the following elements beyond a reasonable doubt: *CF96-17 AS. bel*

23
24 **First:** the incident occurred on or about the 19th day of February, 2017, in Guam;

25 **Second:** the defendant did carry away property of Macy's Department Store, Dededo,
26 a retail mercantile establishment, that is clothing, offered for sale at Macy's
27 Department Store, Dededo, with the intent of permanently depriving Macy's
28

1 Department Store, Dededo of the possession, use and benefit of such
2 merchandise without paying the full retail value of such merchandise, the
3 amount involved exceeding five hundred dollars (\$500.00) but less than
4 fifteen hundred dollars (\$1500.00); and,

5 **Third:** the defendant did so intentionally and knowingly.

6 *CFP-17 R-11*
7 The Defendant understands that to establish a violation of POSSESSION OF A SCHEDULE
8 TWO CONTROLLED SUBSTANCE (As a Third Degree Felony), as charged pursuant to 9 GCA §§
9 67.401.2 (a) & (b), the People must prove each of the following elements beyond a reasonable doubt:

10
11 **First:** the incident occurred on or about the 19th day of February, 2017, in Guam;

12 **Second:** the defendant did unlawfully possess a schedule two controlled substance,
13 this is, oxycodone; and,

14 **Third:** the defendant did so intentionally and knowingly.

15 4. Defendant understands and agrees Defendant may be called upon to testify under oath
16 about the factual details of these transactions at the taking of this guilty plea.

17
18 5. Defendant understands that Defendant has a right to move for a reduction of sentence
19 within one hundred twenty (120) days of sentencing pursuant to 8 GCA § 120.46 and 9 GCA §
20 80.22, and agrees to waive that right for the purpose of this plea.

21 6. Defendant understands that Defendant has a right to appeal Defendant's convictions
22 in this case pursuant to 8 GCA §§ 130.10 and 130.15, and agrees to waive that right for the purpose
23 of this plea.

24
25 7. Defendant understands and agrees that this agreement shall not be binding on the
26 People should the Defendant be charged with or commit a crime between the time of Defendant's
27 agreement and the time for sentencing in this case.
28

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- 1 8. The Attorney General and Defendant agree to the following:
- 2 a. Defendant agrees to fully and truthfully cooperate with the Government of Guam
- 3 Attorney General's Office and any other government entity lawfully authorized to
- 4 conduct any inquiry, investigation or proceeding related to the offenses to which
- 5 Defendant is pleading guilty and CF-0055-17 & CF-0090-17;
- 6 b. Defendant agrees to testify truthfully at any court proceeding, including grand jury,
- 7 trial or any other hearing to which he is called to testify, specifically concerning his
- 8 own case or those involving CF-0055-17 & CF-0090-17;
- 9 c. Defendant agrees that this cooperation with the Attorney General will begin
- 10 immediately following his plea of guilty;
- 11 d. Defendant understands and agrees that if he does not cooperate fully with the Attorney
- 12 General as detailed herein, that the Attorney General may later charge and prosecute
- 13 her for any crimes she may have committed, or seek to have this plea agreement
- 14 revoked on the basis of such non-cooperation.
- 15 9. Defendant understands that the Court may enter a judgment for a lesser included
- 16 offense, if one exists, pursuant to 9 GCA § 80.22, and agrees to waive the right to such a reduction
- 17 for purposes of this plea.
- 18 10. The Attorney General and Defendant agree, in consideration for Defendant's plea(s)
- 19 to the following:
- 20 That as to the charges of RETAIL THEFT (As a Misdemeanor), TWO CHARGES,
- 21 in CF-0055-17 and RETAIL THEFT (As a Third Degree Felony), and
- 22 POSSESSION OF A SCHEDULE TWO CONTROLLED SUBSTANCE (As a
- 23 Third Degree Felony), in CF-0090-17, the Court will sentence the Defendant to a
- 24 period of FIVE (5) YEARS incarceration, all but FIFTY-FIVE (55) DAYS
- 25 suspended, with credit for time served. Defendant shall be placed on a probation
- 26 term of FIVE (5) years. In addition, the following conditions and penalties shall be
- 27 imposed:
- 28

- 1 a. Defendant shall perform one hundred fifty (150) hours of community service work
2 under the direction of the appropriate supervising authority. Defendant shall receive
3 two (2) hours credit towards community service for each hour of counseling
4 Defendant attends; Counseling hours may not be credited towards fine payments that
5 have been converted to community service;
- 6 b. Defendant shall pay a fine in the amount of five thousand dollars (\$5,000), plus court
7 costs, to be paid to the Drug Treatment and Enforcement Fund, pursuant to 9 GCA
8 §§67.401.12 and 80.31.1, and shall be paid monthly over the supervision period.
9 Defendant shall pay no less than two hundred twenty dollars, (\$220.00), per month
10 following Defendant's guilty plea ~~or the first month following Defendant's release~~
11 ~~from Department of Corrections.~~ If financially unable to pay this fine, all but five
12 hundred dollars (\$500) may be converted to community service at the prevailing
13 minimum wage rate. The five hundred dollars (\$500) must be paid in full prior to the
14 end of the supervision time period;
- 15 c. Defendant shall be liable for restitution in the following amounts- (1) one hundred and
16 seventy-two dollars (\$172.00) to MacTech Guam; and, (2) two hundred and five
17 dollars (\$205.00) to Benson Guam Enterprises. Defendant shall be jointly and
18 severally liable for these entire restitution amounts, along with any other co-
19 defendants who are or do plead guilty in connection with these specific crimes as
20 charged in this case. Defendant indicates he is ready, willing, and able to pay these
21 amounts of restitution as a material condition of his probation;
- 22 d. That during the course of Defendant's supervision, sanctions up to and including days
23 of incarceration at the Department of Corrections may be imposed as sanctions. Days
24 of incarceration imposed as sanctions for violation of supervision requirements will
25 **not be credited** as time served pursuant to 9 GCA § 80.46;
- 26 e. That during defendant's FIVE (5) YEAR probation period, the following conditions
27 of probation shall be imposed:
- 28 i. Defendant shall attend two (2) recovery support group meetings per week, for
twelve (12) weeks after the taking of his plea, for a total of twenty-four (24)
meetings, or as otherwise ordered by the Court;

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- 1 ii. Defendant shall attend and successfully complete any drug and/or alcohol
2 counseling program recommended by the Court after assessment at the **Guam**
3 **Behavioral Health and Wellness Center** at no cost to the Defendant.
4 Defendant shall diligently report within seventy two (72) hours from either his
5 ~~release from the Department of Corrections or his guilty plea;~~
6 iii. Defendant shall report to the appropriate supervising authority three times per
7 week or as ordered by the Court, and at those times will take a drug test if
8 requested. Failure to take the drug tests, if requested, will be considered a
9 violation. Defendant will report for his initial intake within two working days
10 of Defendant's ~~release from the Department of Corrections or Defendant's~~
11 ~~guilty plea;~~
12 iv. Defendant shall perform one hundred fifty (150) hours of community service
13 work under the direction of the appropriate supervising authority. Defendant
14 shall perform no fewer than five (5) hours of community service work each
15 month, commencing upon the first month following Defendant's ~~guilty plea or~~
16 ~~the first month following Defendant's release from Department of Corrections.~~
17 Defendant shall receive two (2) hours credit towards community service for
18 each hour of counseling Defendant attends;
19 v. Defendant stipulates to forfeit any contraband and cash seized to the Guam
20 Police Department for Drug Training;
21 vi. Defendant shall not associate with any felons known to Defendant as felons;
22 vii. Defendant shall stay away from all firearms and other deadly weapons, and
23 under no circumstances is Defendant to possess, carry, transfer, or use any
24 firearms;
25 viii. Defendant shall forfeit Defendant's Guam Firearm Identification Card if
26 Defendant possesses one and shall not reapply for one in the event Defendant
27 does not possess one;
28 ix. Defendant is to surrender Defendant's Passport, if any, to the appropriate
supervising authority;

- 1 x. Defendant shall not leave Guam without the approval of the Court or the
2 appropriate supervising authority, with prior notice being given to the Office
3 of the Attorney General, Prosecution Division;
- 4 xi. Defendant shall not possess or consume any illegal controlled substances;
- 5 xii. Defendant shall not consume any alcoholic beverages;
- 6 xiii. Defendant shall not enter any establishments which sell primarily alcoholic
7 beverages;
- 8 xiv. Defendant shall permit any Peace Officers to search the Defendant's
9 person, automobile and residence or room where the Defendant is
10 residing, for firearms, alcohol, illegal controlled substances, drug masking
11 agent or prohibitor or adulterate at any time such a search is requested.
12 Failure to allow such a search will be considered a violation. Defendant
13 and Defendant's attorney stipulate that a presumptive positive field test
14 for drugs, including the Roche Cup or On Tract Test Systems, will be
15 considered evidence of a violation. It will be a presumptive violation to
16 find any drug masking agent or prohibitor or adulterate in the
17 Defendant's possession, automobile, residence or room where the
18 Defendant is residing or if Defendant has tested presumptive positive for
19 any prohibitor or adulterate. It shall also be a violation for submitting
20 any sample for testing that is was not provided by the Defendant;
- 21 xv. Defendant shall make good faith efforts to obtain and maintain legal
22 employment or continue in school;
- 23 xvi. Defendant shall not enter, and shall stay five hundred feet ('500) away from
24 the following victim businesses: (1) MacTech Guam, (2) Benson Guam
25 Enterprises, and (3) Macy's Department Store, Dededo;
- 26 xvii. Defendant shall obey all the laws of Guam; and,
- 27 xviii. Defendant shall abide by any other reasonable conditions imposed by the
28 Court or the appropriate supervising authority.

1 11. Defendant understands that if Defendants violates any conditions of release or of
2 probation, that the Court may find Defendant in violation and sentence Defendant to serve the
3 maximum sentence in this case.

4 12. Defendant states Defendant has told Defendant's lawyer all the facts and
5 circumstances known about the charges. Defendant's lawyer has counseled and advised Defendant
6 on the nature of each charge as well as on any and all lesser included charges.
7

8 13. Defendant and the People each intend this Plea Agreement and the sentence imposed
9 be a final sentence and a total and conclusive resolution of the charges described within this Plea
10 Agreement.
11

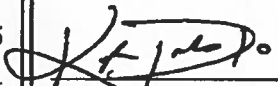
12 14. The parties hereto fully and completely understand and agree that it is in court's duty
13 to impose sentence upon the Defendant, and that any sentence either stipulated to or recommended
14 herein is not binding on the court. If after accepting this plea the court concludes that any of the plea
15 agreement's provisions regarding sentence or the term and conditions of probation are inappropriate,
16 it can reject the plea. If the court decides to reject the plea agreement provisions regarding
17 sentencing, it must give both the People and the Defendant an opportunity to withdraw from the plea
18 agreement. In case this plea agreement is withdrawn, all original charges will automatically be
19 reinstated.
20

21 15. If the Court decides to reject the plea agreement provisions regarding sentencing and
22 neither the People nor the Defendant elects to withdraw the plea agreement, then any sentence either
23 stipulated to or recommended herein is not binding upon the court, and the court is bound only by
24 the sentencing limits set forth in the applicable statutes.
25

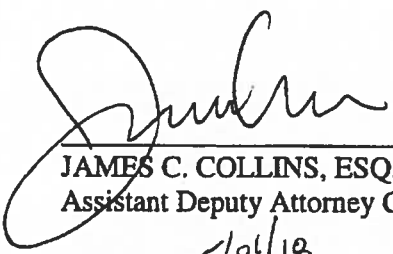
26 16. By signature, Defendant attests Defendant has read this agreement and its provisions
27 have been fully explained by Defendant's attorney. Defendant believes Defendant's lawyer has
28

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1 done all that anyone could do to counsel and assist Defendant and is satisfied with the advice and
2 help received.

3
4
5 
6 **KYLE AUSTERO PABLO**
7 Defendant

8 Dated: 4/30/18


9
10 **JAMES C. COLLINS, ESQ.**
11 Assistant Deputy Attorney General

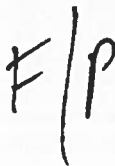
Dated: 05/01/18

12
13 
14 **TERENCE TIMBLIN, ESQ.**
15 Counsel for Defendant

16 Dated: 4/30/18

17 After a hearing held on 6/25/18 and a finding the Defendant's pleas
18 of guilty to RETAIL THEFT (As a Misdemeanor), TWO CHARGES, in CF-0055-17 and RETAIL
19 THEFT (As a Third Degree Felony), and POSSESSION OF A SCHEDULE TWO CONTROLLED
20 SUBSTANCE (As a Third Degree Felony), in CF-0090-17 are knowingly and voluntarily made, this
21 Court now accepts the guilty plea and adjudges the Defendant guilty of these offenses. The Court
22 will also accept the Plea Agreement and will sentence the Defendant as provided therein.

23 ~~A Progress Hearing is set for _____, 20____.~~

24 


25 **HONORABLE ANITA A. SUKOLA**
26 Judge, Superior Court of Guam

27 **RECEIVED FOR SERVICE:**

28 TIME: 1 PM

DATE: 7/2/18

INITIAL: MA

MARSHAL, SCOG

SERVICE VIA COURT BOX

I acknowledge that a copy of the
original hereto was placed in the
court box of:

Atty. T. Timblin

Date: 7/2/18 Time: 9:30

Rosalind C. Balajadia

Deputy Clerk, Superior Court