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**FILED**

MAR 26 2013

Clerk, U.S. District Court  
District Of Montana  
Billings

ATTORNEY FOR PLAINTIFF  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>vs.</p> <p>PAUL DANIEL BOTTOMLEY,</p> <p>Defendant.</p>	<p>CR 13-04-BU- DLC</p> <p><u>PLEA AGREEMENT</u></p>
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Pursuant to Rule 11 of the Federal Rules of Criminal Procedure,

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the United States of America, by Jessica T. Fehr, Assistant United States Attorney for the District of Montana, and the defendant, Paul Daniel Bottomley, and his attorney, Jay Lansing, have agreed upon the following:

**1. Scope:** This plea agreement is between the United States Attorney's Office for the District of Montana and defendant. It does not bind any other federal, state or local prosecuting, administrative or regulatory authority, or the United States Probation Office.

**2. Charges:** Defendant agrees to plead guilty to the Information which charges the crime of misprision of a felony in violation of 18 U.S.C. § 4. This offense carries a maximum punishment of three years imprisonment, a \$250,000 fine, 1 year supervised release, and a \$100 special assessment.

**3. Nature of the Agreement:** The parties agree that this plea agreement shall be filed and become a part of the record in this case, and will be governed by Rule 11(c)(1)(A) and (B), *Federal Rules of Criminal Procedure*. The defendant acknowledges that the agreement

will be fulfilled provided, a) the United States does not pursue other charges against the defendant, and b) makes the recommendations provided below. The defendant understands that if the agreement is accepted by the Court, there will not be an automatic right to withdraw the plea even if the Court does not accept or follow the recommendations made by the United States.

**4. Admission of Guilt:** The defendant will plead guilty because defendant is in fact guilty of the charge contained in the Information. In pleading guilty, the defendant acknowledges that on or about February 2, 2012, in the State and District of Montana, the defendant, PAUL DANIEL BOTTOMLEY, having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit, the sale and shipment of misbranded and unapproved drugs from sources outside of the United States into the United States by Canada Drugs, Ltd. and its related entities, all in violation of the Food, Drug and Cosmetics Act, 21 U.S.C. §§ 301 et. seq. ("FDCA"), and a violation of 21 U.S.C. §§ 331(a), (c), (d) and 21 U.S.C. § 355(a), did conceal the same by sending a lulling email from Belgrade, Montana, to

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an individual in California, N.T. so she/he would continue to purchase misbranded and unapproved drugs from Canada Drugs, Ltd., and its related entities, and did not as soon as possible make known the same to some judge and other person in civil or military authority under the United States, in violation of 18 U.S.C. § 4.

Elements:

Misprison of a felony, 18 U.S.C. §4.

First, the principal committed and completed the felony alleged;

Second, that the defendant had knowledge of the crime committed by the principal;

Third, the defendant failed to notify authorities; and

Fourth, the defendant took steps to conceal the crime.

**5. Waiver of Rights by Plea:**

(a) The defendant is entitled to have the charge outlined in paragraph 1, above, prosecuted by an indictment returned by a concurrence of 12 or more members of a legally constituted grand jury, consisting of not less than 16 and not more than 23 members.

(b) The government has a right to use against the defendant, in

a prosecution for perjury or false statement, any statement that the defendant gives under oath during plea colloquy.

(c) The defendant has the right to plead not guilty or to persist in a plea of not guilty.

(d) The defendant has the right to a jury trial unless the defendant, by written waiver, consents to a non-jury trial. The government must also consent and the court must approve a non-jury trial.

(e) The defendant has the right to be represented by counsel, and if necessary, have the court appoint counsel, at trial and at every other stage of these proceedings.

(f) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and defense attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the

defendant is presumed innocent, and that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(g) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he was persuaded of the defendant's guilt beyond a reasonable doubt.

(h) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and the defense attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence on the defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, their appearance could be mandated through the subpoena power of the court.

(i) At a trial, there is a privilege against self-incrimination so that the defendant could decline to testify and no

inference of guilt could be drawn from refusal to testify. Or the defendant could exercise the choice to testify on his or her own behalf.

(j) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal the conviction to the Ninth Circuit Court of Appeals for review to determine if any errors were made which would entitle the defendant to reversal of the conviction.

(k) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, *Federal Rules of Criminal Procedure*. By execution of this agreement, the defendant expressly waives that right and agrees to hold that hearing before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge.

The defendant understands that by pleading guilty pursuant to this agreement, defendant is waiving all the rights set forth in this paragraph. The defendant's attorney has explained these rights and the consequences of waiving these rights.

**6. Recommendations:** The United States will recommend

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the defendant be given three points for acceptance of responsibility if appropriate under the Guidelines unless the defendant is found to have obstructed justice prior to sentencing, USSG § 3C1.1, or acted in anyway inconsistent with acceptance of responsibility. The parties reserve the right to make any other arguments at the time of sentencing. Defendant understands that the court is not bound by this recommendation.

**7. Sentencing Guidelines:** Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

**8. Forfeiture:** During the investigation of the defendant and others, the Government obtained seizure warrants for automobiles, real property and bank accounts. These seized assets are specifically described in the government's First Amended Verified Civil Forfeiture Complaint that was filed on April 20, 2012. The case pending before the Honorable Judge Dana Christensen, in the Butte Division of the District of Montana, is captioned *United States v. Eleven Parcels of Real*

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*Property Located in Gallatin County, Montana, et al.*, Case No. CV 12-10-BU-DLC.

The United States, through Assistant United States Attorney Victoria Francis, and the defendant have reached a resolution in the civil proceeding regarding the forfeiture. The defendant agrees to take all necessary steps to effectuate the settlement reached with the United States in Case No. CV 12-10-BU-DLC, including but not limited to, the transfer of titles, ownership, and possession of the property forfeited to the government through the settlement, including executing any necessary documents and providing truthful testimony and other evidence to rebut the claims of any party that is or may claim an interest in the seized and forfeited property.

The defendant further agrees not to file a claim in any forfeiture proceeding or otherwise contest, in any manner the settlement agreement reached with the United States in Case No. CV 12-10-BU-DLC.

Based on the forfeiture obtained by the United States in Case No. CV 12-10-BU-DLC, the United States has no intention of seeking a fine

in this matter as part of the criminal sentencing.

**9. Appeal Waiver:** The defendant acknowledges that 18 U.S.C. § 3742 affords him the right to appeal the sentence imposed in this case. In consideration for the government's concessions in this agreement, the defendant waives any and all right to directly appeal any aspect of the sentence, including conditions of probation or supervised release.

The defendant also waives his right to challenge the sentence in a collateral proceeding pursuant to 28 U.S.C. § 2255. This waiver does not prohibit his right to pursue or maintain such an action arising from facts not known or reasonably capable of being known at the time of his entry of guilty plea or alleging that he received ineffective assistance of counsel.

**10. Waiver of Hyde Claims:** The defendant hereby waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (statutory note), for attorney's fees or investigative expenses arising out of the investigation or prosecution of this matter.

**11. FOIA Waiver:** The defendant hereby waives all rights,

whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

**12. Waiver of Objection to Allocution Use in the Event of Withdrawal of Guilty Plea:** The defendant further agrees that any statements made by him or on his behalf in the change of plea proceedings in this matter may be used against him later at a trial on the merits should he withdraw his guilty plea. The defendant hereby expressly waives any objection to such use under Rule 410, Federal Rules of Evidence and Rule 11(f), Federal Rules of Criminal Procedure if he successfully withdraws the plea entered pursuant to this agreement.

**13. Immigration Waiver (*Padilla* Waiver):** Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States.

Under federal law a broad range of crimes are removable offenses, *possibly* <sup>JL</sup> <sub>PB</sub> including the offenses to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is his automatic removal from the United States.

**14. Potential Departure for Substantial Assistance:** The defendant maintains that he can provide substantial assistance to the United States that would make him eligible to receive consideration from the prosecution in the form of a substantial assistance departure motion under U.S.S.G. § 5K1.1 and/or Rule 35, Federal Rules of Criminal Procedure.

The defendant has cooperated with the government since he was initially contacted by law enforcement. The charge to which the defendant is pleading is a reduced charge, in part, because of the

defendant's cooperation to date. The defendant may still be eligible for a further reduction in sentence pursuant to U.S.S.G. § 5K1.1 and/or Rule 35 as set forth below.

***Obligations of the Defendant:*** Substantial assistance means, for the purposes of this agreement, that the defendant agrees to: provide complete, truthful, forthright, material, important, valuable and meaningful information to the best of his knowledge and belief bearing on any subject inquired of him by the Court, the United States Attorney's Office, the Grand Jury, or any Federal, State, or local investigative agency, and provide complete, truthful, and forthright testimony if called upon in any proceeding before a Court or Grand Jury.

The defendant understands that providing materially false information or withholding material information may result in further criminal action for fraud, false statement, obstruction of justice or perjury.

***Obligations of the United States:*** If the defendant chooses to provide assistance, the prosecution agrees that the information provided will not be used against the defendant in any criminal

proceeding, including at his own sentencing. This testimonial restriction does not extend to forfeiture or other civil issues.

The United States will consider and evaluate any written proffer or nature of information and the recommendations of law enforcement. If the prosecution concludes that the assistance provided is substantial, truthful and complete, as required, a departure motion determined by the government to be appropriate under the circumstances will be made. By this agreement the defendant is not offered or promised that a departure motion, or any specific type of motion, will be filed by the government.

**Acknowledgments:** The defendant acknowledges that if he commits any local, state, or federal crime (other than at the direction of law enforcement in furtherance of an investigation) that diminishes the defendant's credibility or effectiveness as a witness, the United States may, in the prosecutor's discretion, refuse to file any departure motion even though the defendant may have also provided assistance which is otherwise considered substantial. The defendant acknowledges that no promise has been made and accepts this agreement aware that no such motion will be filed if the government determines that the information

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is either untruthful, willfully incomplete, of little value, or insubstantial.

**Recommendations:** If the government makes a motion for reduction of sentence, the defendant understands that the government will also make a recommendation to the Court about the extent of the departure. Although the Court is required to impose any applicable statutorily required penalties, the parties understand that the Court is not bound by the recommendations of either party.

**Polygraph Examination:** Nothing shall limit the United States' method of verifying the truthfulness of defendant's statements. As part of this process, in the sole discretion of the United States, the defendant agrees to submit to a polygraph examination to verify any information the defendant may provide to the United States, including but not limited to defendant's assets. Such examination will be conducted by a polygrapher chosen by the United States and conducted in a manner as directed by the United States. Neither party shall object to the admissibility in evidence of the results of such examination in any proceeding to enforce or set aside this agreement in which compliance with the terms of this agreement are an issue.

**15. Voluntary Plea:** The defendant and defendant's attorney acknowledge that no threats, promises, or representations have been made to induce the defendant to plead guilty, and this agreement is freely and voluntarily endorsed by the parties.

**16. Detention/Release After Plea:** Pursuant to 18 U.S.C. § 3143(a)(1), the defendant acknowledges that he will be detained upon conviction unless the Court finds, by clear and convincing evidence, that he will not likely flee or pose a danger to the community. The United States does not believe that as of the date of the signing of this agreement that the defendant poses a flight risk or a danger to the community. However, the United States reserves the right to alter that opinion based on information obtained prior to the change of plea and/or sentencing date.

**17. Breach:** If defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the U.S. Attorney's Office is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea.

**18. Entire Agreement:** Any statements or representations made by the United States, the defendant, or his counsel prior to the

full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. **This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.**

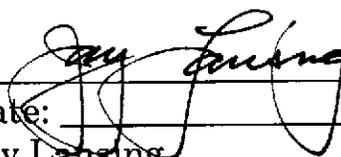
**MICHAEL W. COTTER**  
**United States Attorney**



Date: 3/26/13  
Jessica T. Fehr  
Assistant U. S. Attorney



Date: 3/21/13  
Paul Daniel Bottomley  
Defendant



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Jay Lansing  
Defense Counsel

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