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**ORIGINAL
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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

7: 05 CR 00182 AWI

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MARTHA BAUTISTA,)
)
Defendant.)

CR. NO.
VIOLATIONS: 19 U.S.C. §
501(c)-Embezzlement and
Theft of Labor Union Assets

INFORMATION

COUNT ONE: [19 U.S.C. § 501(c)-Embezzlement and Theft of Labor
Union Assets]

The United States Attorney charges: T H A T
MARTHA BAUTISTA,
defendant herein, beginning in or about August, 2002, and
continuing to September, 2003, within the State and Eastern
District of California, while employed as Secretary-Treasurer of

1 the Machinists AFL-CIO, Local Lodge 1528, a labor organization
2 engaged in an industry affecting commerce, did embezzle, steal and
3 unlawfully and willfully abstract and convert to her own use
4 monies, funds, securities property and other assets of said labor
5 union in an amount not exceeding \$9,500, in violation of Title 29,
6 United States Code, Section 501(c).

7 DATED: 6/1/05

McGREGOR W. SCOTT
United States Attorney

8 By 
9 VIRNA L. SANTOS
Assistant U.S. Attorney

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8 **IN THE UNITED STATES DISTRICT COURT FOR THE**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 **UNITED STATES OF AMERICA,**)

12 **Plaintiff,**)

13 **v.**)

14 **MARTHA BAUTISTA,**)

15 **Defendant.**)
16
17

CR. F. NO. 1:05 CR 00182 AWI

**MEMORANDUM OF PLEA
AGREEMENT PURSUANT TO
RULE 11(e) OF THE
FEDERAL RULES OF
CRIMINAL PROCEDURE**

**DATE: June 20, 2005
TIME: 9:00 a.m.
COURTROOM THREE**

18 Pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, the United States of
19 America, by and through McGregor W. Scott, the United States Attorney for the Eastern District
20 of California, and Assistant United States Attorney Virna L. Santos, and the defendant, Martha
21 Bautista, and her attorney, Mark Sullivan, have agreed as follows:

22 1. Charge.

23 (a) The defendant acknowledges that she has been charged by felony Information as
24 follows:

25 **Embezzlement and Theft of Labor Union Assets, in violation of Title 29, United States**
26 **Code, Section 501(c).**

27 2. Agreements by the Defendant.

28 (a) The defendant agrees that this plea agreement shall be filed with the court and

1 become a part of the court record.

2 (b) The defendant agrees to waive her right to be charged by Indictment and further
3 agrees to enter a plea of guilty to the felony Information charging her Embezzlement and Theft of
4 Labor Union Assets, as described above.

5 (c) Defendant agrees that for sentencing purposes only, her base offense level for
6 Embezzlement and Theft of Labor Union Assets is six (6) pursuant to Section 2B1.1(a)(2) of the
7 United States Sentencing Commission Guidelines Manual plus two (2) levels for loss of more than
8 \$5,000 but less than \$10,000 (§ 2F1.1(b)(1)(B)). In addition, the defendant agrees that, pursuant to
9 U.S.S.G. § 3B1.3, an additional two-level role enhancement should be applied because she abused
10 her position of trust in the commission of this offense.

11 (d) Defendant agrees that restitution in the amount of \$165,259.27 is due to Machinists
12 AFL-CIO, Local Lodge 1528. Defendant agrees to make restitution as determined by the U.S.
13 Probation Department. On May 6, 2005, defendant remitted a \$50,000 payment to Machinist
14 Union Local #1528 as initial payment of her restitution obligation.

15 (e) The defendant is aware that Title 18, United States Code, Section 3742 affords a
16 defendant the right to appeal the conviction and sentence imposed. Acknowledging this, the
17 defendant knowingly waives the right to appeal her conviction or any sentence which is in
18 accordance with the maximum provided in the statute(s) of conviction (or the manner in which
19 that sentence was determined) on the grounds set forth in Title 18, United States Code, Section
20 3742 or on any ground whatever, in exchange for the concessions made by the United States in this
21 plea agreement. The defendant also waives her right to challenge her conviction, sentence or the
22 manner in which it was determined in any post-conviction attack, including but not limited to a
23 motion brought under Title 28, United States Code, Sections 2241 or 2255.

24 If the defendant's conviction on any of the counts to which she is pleading is ever vacated
25 at the defendant's request, or her sentence is ever reduced at his request, the government shall have
26 the right (1) to prosecute the defendant on any of the counts to which she pleaded guilty; (2) to
27 reinstate any counts that may be dismissed pursuant to this agreement; and (3) to file any new
28 charges that would otherwise be barred by this agreement. The decision to pursue any or all of

1 these options is solely in the discretion of the United States Attorney's Office. By signing this
2 agreement, the defendant agrees to waive any objections, motions, and defenses he might have to
3 the government's decision, including Double Jeopardy. In particular, she agrees not to raise any
4 objections based on the passage of time with respect to such counts including, but not limited to,
5 any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial
6 Clause of the Sixth Amendment.

7 If it is determined that the defendant has violated any provision of this Agreement or if the
8 defendant successfully moves to withdraw her plea: (1) all statements made by the defendant to
9 this Court during her change of plea hearing, to the government or other designated law
10 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
11 whether before or after this Agreement, shall be admissible in evidence in any criminal, civil, or
12 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall
13 assert no claim under the United States Constitution, any statute, Rule 11(e)(6) of the Federal
14 Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule,
15 that statements made by the defendant before or after this Agreement, or any leads derived
16 therefrom, should be suppressed. By signing this Agreement, the defendant waives any and all
17 rights in the foregoing respects.

18 (f) The defendant agrees to waive all rights under the "Hyde Amendment", Section 617,
19 P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection
20 with the investigation and prosecution of all charges in the above-captioned matter and of any
21 related allegations (including without limitation any charges to be dismissed pursuant to this
22 Agreement and any charges previously dismissed).

23 3. Agreements by the Government.

24 (a) The government will recommend that the defendant receive a two-level reduction
25 in the computation of the offense level due to her acceptance of responsibility, provided the
26 defendant clearly and unequivocally accepts responsibility for her conduct. The government will
27 not be obligated to make such a recommendation if the defendant provides materially false
28 information of any type to the Probation Office or the Court in connection with her sentencing.

1 (b) The government will recommend that the defendant be sentenced as follows: 1) the
2 applicable base offense level for *Embezzlement and Theft of Labor Union Assets* should be six (6)
3 pursuant to Section 2B1.1(a)(2) of the United States Sentencing Commission Guidelines Manual;
4 2) two (2) levels for loss of more than \$5,000 but less than \$10,000 (§ 2F1.1(b)(1)(F)) should be
5 added; and 3) an additional two-level role enhancement should be applied because the defendant
6 abused a position of trust in the commission of this offense, pursuant to U.S.S.G. § 3B1.3.

7 (c) The government acknowledges that on May 6, 2005, defendant Bautista remitted at
8 \$50,000 payment to Machinist Union Local #1528 as initial payment of her restitution obligation.

9 (d) The government will recommend that the defendant be sentenced at the low end of
10 the applicable sentencing guideline range, including probation with no time in custody.

11 4. Nature, Elements and Possible Defenses.

12 The defendant has read the charges against her contained in the Indictment and Information
13 in this case, and the charges have been fully explained to her by her attorney. Further, the
14 defendant fully understands the nature and elements of the crimes with which she has been
15 charged, together with the possible defenses thereto, and has discussed them with her attorney.

16 The defendant understands that in order to prove her guilty of *Embezzlement and Theft of*
17 *Labor Union Assets*, the government must prove each of the following elements beyond a
18 reasonable doubt:

19 First, the defendant was an officer directly employed by a union

20 Second, said union is a labor organization engaged in an industry affecting
21 commerce;

22 Third, in her capacity as a union employee, the defendant did embezzle, steal and
23 unlawfully and willfully converted to her own use, funds, property and assets belonging to the
24 union.

25 5. Factual Basis.

26 The defendant will plead guilty because she is in fact guilty of the crime set forth in the
27 Information, Cr. F. No. 1:05-00182 AWI. The defendant also agrees that her guilty plea will be
28 based upon the following facts, although she acknowledges that, as to other facts, the parties may

1 disagree:

2 *Beginning in or about August, 2002 and continuing to September 2003, within the*
3 *State and Eastern District of California, defendant Martha Bautista, while acting as*
4 *Secretary-Treasurer of the Machinists AFL-CIO, Local Lodge 1528, a labor organization*
5 *engaged in an industry affecting commerce, did embezzle, steal and unlawfully and*
6 *willfully abstract and covert to her own use, monies and assets of said labor union totaling*
7 *over \$1000 but less than \$10,000. Specifically, as financial secretary and treasurer of the*
8 *Machinists Lodge, the defendant was solely responsible for depositing dues and payment of*
9 *union expenses. The defendant had sole control of the union's computerized accounting*
10 *system for all bank accounts, which were password protected. Only the defendant knew*
11 *the password. During the period of August 2002 to September 2003, the defendant issued*
12 *herself unauthorized checks from the union's accounts. The defendant attempted to*
13 *conceal her theft by falsifying union financial records, concealing or destroying cancelled*
14 *checks and making false statements in the union's annual financial report. Because she*
15 *was the sole employee in charge of all accounts and financial reporting, she abused the*
16 *position of trust she held within the union. Her position also permitted concealment of the*
17 *embezzlement for nearly one year.*

18 *An independent audit conducted after the defendant resigned from her position*
19 *confirmed the embezzlement.*

20 6. Potential Sentence.

21 The defendant understands that, in determining his sentence, the Court is required to take
22 into consideration the Federal Sentencing Guidelines adopted by the United States Sentencing
23 Commission. Further, she understands that the court may give her any reasonable sentence above
24 or below the applicable Guideline range depending on aggravating or mitigating circumstances in
25 her case. The following is the maximum potential sentence that the defendant faces:

26 (a) Imprisonment.

27 Maximum: Five (5) Years.

28 (b) Fine.

Maximum: Ten Thousand Dollars (\$10,000).

(c) Both such fine and imprisonment.

(d) Term of Supervised Release.

Maximum: Three (3) years.

(Should the defendant violate any of the terms of her supervised release, she can be
returned to prison for the period of supervised release actually imposed by the Court).

(e) Penalty Assessment.

Mandatory: One Hundred Dollars (\$100).

1 7. Waiver of Rights.

2 The defendant understands that by pleading guilty she surrenders certain rights, including
3 the following:

4 (a) If the defendant persisted in a plea of not guilty to the charges against her, she
5 would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by a
6 judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the
7 trial be conducted by the judge sitting without a jury, the defendant, the government and the judge
8 all must agree that the trial be conducted by the judge without a jury.

9 (b) If the trial were a jury trial, the jury would be composed of twelve lay persons
10 selected at random. The defendant and his attorney would have a say in who the jurors would be
11 by removing prospective jurors for cause where actual bias or other disqualification is shown, or
12 without cause by exercising peremptory challenges. The jury would have to agree unanimously
13 before it could return a verdict of either guilty or not guilty. The jury would be instructed that the
14 defendant is presumed innocent and that it could not convict him unless, after hearing all the
15 evidence, it was persuaded of his guilt beyond a reasonable doubt.

16 (c) If the trial were held before a judge without a jury, the judge would find the facts
17 and determine, after hearing all the evidence, whether or not he was persuaded of the defendant's
18 guilt beyond a reasonable doubt.

19 (d) At a trial, whether by a jury or a judge, the government would be required to
20 present its witnesses and other evidence against the defendant. The defendant would be able to
21 confront those government witnesses and his attorney would be able to cross-examine them. In
22 turn, the defendant could present witnesses and other evidence on her own behalf. If the witnesses
23 for the defendant would not appear voluntarily, she could require their attendance through the
24 subpoena power of the Court.

25 (e) At a trial, the defendant would have a privilege against self-incrimination so that
26 she could decline to testify, and no inference of guilt could be drawn from this refusal to testify.

27 The defendant understands that by pleading guilty she is waiving all of the rights set forth
28 above and the defendant's attorney has explained those rights to her and the consequences of her

1 waiver of those rights.

2 8. Questions by Court.

3 The defendant understands that if the court questions her under oath, on the record and in
4 the presence of counsel, about the offenses to which she has pleaded guilty, her answers, if false,
5 may later be used against her in a prosecution for perjury or false statement.

6 9. Entire Agreement.

7 The defendant and her attorney acknowledge that no threats, promises or representations
8 have been made, nor agreement reached, other than those set forth in this Agreement, to induce
9 defendant to plead guilty.

10 10. Right to Counsel.

11 The defendant understands that she has a right to counsel throughout this case from her
12 initial appearance through her trial or guilty plea or dismissal of the case against her and through
13 and including any sentencing. Unless waived in this agreement, the defendant has a right to
14 counsel for a direct appeal in this case. The defendant understands that the right to counsel
15 includes the provision of defense counsel through the court if the defendant can not afford to hire
16 counsel.

17 11. Court not a Party.

18 It is understood by the parties that the sentencing court is neither a party to nor bound by
19 this agreement and the sentencing judge is free to impose the maximum penalties as set forth in
20 Paragraph 5 above.

21 12. Presentence Report.

22 The defendant understands that the United States Probation Office is not a party to this
23 agreement and will conduct an independent investigation of the defendant's activities and her
24 background and prepare a presentence report which it will submit to the court as its independent
25 sentencing recommendation. In addition, the government will fully apprise the Probation Office,
26 as well as the court, of the full and true nature, scope and extent of the defendant's criminal
27 activities concerning the charges to which the defendant is entering a plea of guilty, including

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1 activities which may not have been charged in the Information or that were the subject of counts
2 which were dismissed pursuant to this Agreement.

3 DATED: 6/1, 2005

McGREGOR W. SCOTT
United States Attorney

4 By 
5 VIRNA L. SANTOS
Assistant U.S. Attorney

6
7 DATED: 5/27, 2005


8 MARTHA BAUTISTA
Defendant

9 DATED: 5/27, 2005


10 MARK SULLIVAN
Attorney for Defendant