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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12  
13 UNITED STATES OF AMERICA, ) No. CR 02-0111 SI  
14 Plaintiff, )  
15 v. ) PLEA AGREEMENT  
16 RICHARD WAYNE SUTTON, )  
17 Defendant. )

18 I, Richard Wayne Sutton, and the United States Attorney's Office for the Northern  
19 (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant  
20 to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

21 The Defendant's Promises

22 1. I agree to waive indictment and plead guilty to counts one, two, and three of the  
23 captioned Superseding Information in this case charging me in counts one and two of Mailing a  
24 Threatening Communication, in violation of 18 U.S.C. § 876, and in count three of Threats  
25 Against the President, in violation of 18 U.S.C. § 871. With respect to count three, which  
26 offense took place in the Eastern District of California, I waive any objection to venue in the  
27 Northern District of California.  
28

PLEA AGREEMENT  
CR 02-0111 SI

1 With respect to the two counts of Mailing a Threatening Communication, in violation of  
2 18 U.S.C. § 876, I agree that, for each count, the elements of the offense and the maximum  
3 penalties are as follows: (1) I knowingly and intentionally deposited for delivery in any post  
4 office or authorized mail repository, or caused to be delivered by the Postal Service, a  
5 communication containing a threat to injure the addressee or another; and (2) I intended the  
6 communication to threaten the addressee or another with injury.

- |    |    |                                 |            |
|----|----|---------------------------------|------------|
| 7  | a. | Maximum prison sentence         | 5 years    |
| 8  | b. | Maximum fine                    | \$ 250,000 |
| 9  | c. | Maximum supervised release term | 3 years    |
| 10 | d. | Mandatory special assessment    | \$ 100     |

11 With respect to count three of the Superseding Information charging me with Threats  
12 Against the President in violation of 18 U.S.C. § 871, I agree that the elements of the offense and  
13 the maximum penalties are as follows: (1) I knowingly and intentionally threatened, in writing, to  
14 injure the President of the United States; and (2) under the circumstances in which the threat was  
15 made, a reasonable person would foresee that it would be understood by persons reading it as a  
16 serious expression of an intention to injure the President of the United States.

- |    |    |                                 |            |
|----|----|---------------------------------|------------|
| 17 | a. | Maximum prison sentence         | 5 years    |
| 18 | b. | Maximum fine                    | \$ 250,000 |
| 19 | c. | Maximum supervised release term | 3 years    |
| 20 | d. | Mandatory special assessment    | \$ 100     |

21 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that  
22 the following facts are true: With respect to count one of the Superseding Information, several  
23 days before December 12, 2001, I knowingly and intentionally caused to be delivered by the  
24 Postal Service an envelope addressed to Senator Barbara Boxer at her San Francisco office by  
25 giving that envelope to a sheriff's deputy to mail from the facility where I was in custody at that  
26 time. That envelope, which contained a white powder and a letter to the attention of the United  
27  
28

1 States Senate, contained a communication threatening to injure Senator Boxer and others. I  
2 intended the letter and powder to threaten Senator Boxer and others with injury.

3 With respect to count two of the Superseding Information, on or about August 29, 2002, I  
4 knowingly and intentionally caused an envelope addressed to the United States Attorney to be  
5 delivered by the United States Postal Service by having it placed in the mail where I was in  
6 custody at that time. The envelope contained a series of wires, parts of a cigarette lighter, a  
7 battery, some papers, and a brown powdery substance. I designed it to look like a letter bomb. I  
8 intended that envelope and its contents to threaten the United States Attorney and whoever  
9 opened it with injury.  
10

11  
12 With respect to count three of the Superseding Information, on or about March 14, 2002,  
13 I knowingly and intentionally threatened to injure the President of the United States, in writing,  
14 by depositing an envelope in the mail system addressed to the President. The envelope contained  
15 a brown powder and a letter which read, in part, "you've been infected RU afraid you better take  
16 Cyproflex Praise Allah." Under the circumstances in which I made this threat, a reasonable  
17 person would foresee that it would be understood by persons hearing or reading it as a serious  
18 expression of an intention to injure the President of the United States.  
19

20 I also agree to admit Charge One in the Form 12 charging a violation of my supervised  
21 release in case number CR 00-05163-001-OWW (Eastern District of California). Specifically, I  
22 agree that I failed to submit to drug testing by missing appointment dates for testing on  
23 September 29, 2001, October 28, 2001, November 8, 2001, and November 13, 2001. Therefore,  
24 I admit that I violated the mandatory drug testing condition, as well as Special Condition #3 of  
25 Supervision, which states that I will participate in drug or alcohol testing as directed by the  
26 probation officer.  
27  
28

1           3. I agree to give up all rights that I would have if I chose to proceed to trial,  
2 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
3 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise  
4 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and  
5 to pursue any affirmative defenses and present evidence.  
6

7           4. I agree to give up my right to appeal my conviction, the judgment, and orders of  
8 the Court. I also agree to waive any right I may have to appeal my sentence.  
9

10           5. I agree not to file any collateral attack on my conviction or sentence, including a  
11 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim  
12 that my constitutional right to the effective assistance of counsel was violated.  
13

14           6. I agree not to ask the Court to withdraw my guilty plea at any time after it is  
15 entered.  
16

17           7. I agree that the Sentencing Guidelines should be calculated as follows, and that I  
18 will not ask for any other adjustments to or reductions of, or downward departures below a  
19 sentence of 41 months:  
20

- |    |  |           |
|----|--|-----------|
| 21 | a. Base Offense Level, U.S.S.G. §§ 2A6.1(a)(1), 3A1.2(a):                                  | 15        |
| 22 | b. Combined Offense Level, U.S.S.G. § 3D1.4  | +3        |
| 23 | c. Acceptance of responsibility:<br>(If I meet the requirements of<br>24 U.S.S.G. § 3E1.1) | -3        |
| 25 | d. Adjusted combined offense level   | <u>15</u> |

26           The supervised release violation that I am admitting is a Grade C violation and  
27 carries a recommended term of custody of 8 to 14 months under the Chapter 7 Policy Statements  
28

1 of the Sentencing Guidelines. I agree that the parties will recommend as follows: a low end  
2 sentence of 8 months; that the sentence for my violation shall run concurrently with the sentence  
3 imposed by the Court in this case; and that, upon conclusion of any sentence imposed for that  
4 violation, my supervision in that case will be terminated in favor of any term of supervision to be  
5 imposed in this case.  
6

7 I agree that, regardless of any other provision in this agreement, the government  
8 may and will provide to the Court and the Probation Office all information relevant to the  
9 charged offenses or the sentencing decision. I also agree that the Court is not bound by the  
10 Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range  
11 applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty plea.  
12

13 8. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution  
14 I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the  
15 government, or the U.S. Probation Office, provide accurate and complete financial information,  
16 submit sworn statements and give depositions under oath concerning my assets and my ability to  
17 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my  
18 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at  
19 the time of sentencing.  
20  
21

22 9. I agree not to commit or attempt to commit any crimes before sentence is imposed  
23 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial  
24 release (if any); intentionally provide false information to the Court, the Probation Office,  
25 Pretrial Services, or the government; or fail to comply with any of the other promises I have  
26 made in this Agreement. I agree not to have any contact with any victims or witnesses in this  
27 case, either directly or indirectly, before and after I am sentenced. This includes, but is not  
28

1 limited to, personal contact; telephone, mail, or electronic mail contact; or any other written form  
2 of communication; and includes any harassing, annoying, or intimidating conduct by me directed  
3 to any victims or witnesses. I agree that the Court should include this agreement as a condition  
4 of my supervised release term. I agree that, if I fail to comply with any promises I have made in  
5 this Agreement, then the government will be released from all of its promises below, but I will  
6 not be released from my guilty plea.  
7

8 10. I agree that this Agreement contains all of the promises and agreements between  
9 the government and me, and I will not claim otherwise in the future.  
10

11 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
12 District of California and the U.S. Attorney's Office for the Eastern District of California, and  
13 does not bind any other federal, state, or local agency.  
14

15 The Government's Promises

16 12. The government agrees to move to dismiss any open charges pending against the  
17 defendant in the captioned Superseding Information in this case at the time of sentencing. At the  
18 time of sentencing, the United States Attorney's Office for the Eastern District of California  
19 agrees to move to dismiss any open charges pending against the defendant in the Indictment  
20 captioned, United States v. Richard Wayne Sutton, CR F-02-5274 REC (filed in the Eastern  
21 District of California on July 25, 2002).  
22

23 13. The government agrees not to file or seek any additional charges against the  
24 defendant that could be filed as a result of the investigation that led to the captioned indictment.  
25

26 14. The government agrees to recommend the Guidelines calculations set out above in  
27 paragraph 7. The government also agrees to recommend that defendant's supervised release  
28 violation in case CR 00-05163-001-OWW (Eastern District of California) be addressed as set

1 forth in paragraph 7.

2 The Defendant's Affirmations

3 15. I confirm that I have had adequate time to discuss this case, the evidence, and this  
4 Agreement with my attorney, and that he has provided me with all the legal advice that I  
5 requested.  
6

7 16. I confirm that while I considered signing this Agreement, and at the time I signed  
8 it, I was not under the influence of any alcohol, drug, or medicine.

9 17. I confirm that my decision to enter a guilty plea is made knowing the charges that  
10 have been brought against me, any possible defenses, and the benefits and possible detriments of  
11 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no  
12 one coerced or threatened me to enter into this agreement.  
13  
14

15  
16  
17 Dated: \_\_\_\_\_

\_\_\_\_\_  
RICHARD WAYNE SUTTON  
Defendant

18  
19  
20 KEVIN V. RYAN  
21 United States Attorney

22  
23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_  
PETER B. AXELROD  
Assistant United States Attorney

25  
26  
27 I have fully explained to my client all the rights that a criminal defendant has and all the  
28

1 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement  
2 and all the rights he is giving up by pleading guilty, and, based on the information now known to  
3 me, his decision to plead guilty is knowing and voluntary.  
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Dated: \_\_\_\_\_

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DANIEL HOROWITZ  
Attorney for Defendant