

**WESTERN JUDICIAL CIRCUIT  
NAVY-MARINE CORPS TRIAL JUDICIARY**

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UNITED STATES	)	GENERAL COURT-MARTIAL
	)	
v.	)	
	)	<b>MEMORANDUM OF PRETRIAL</b>
MUNOZ, Eduardo	)	<b>AGREEMENT</b>
Staff Sergeant,	)	
U.S. Marine Corps	)	<b>(PART I)</b>
XXX-XX-4510	)	

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I, SSgt Munoz, USMC, the accused in a general 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 to the charges stated as indicated below provided that all other charges I am presently facing are dismissed with prejudice upon the military judge finding me guilty of the charges stated 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 (the Maximum Sentence Limitation Appendix) of this agreement 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, Captain Christian P. Hur, in all respects and consider him 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 Marine Corps. I understand that such an administrative discharge could result in an other than honorable characterization of service, unless otherwise limited by this agreement, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved for any reason.

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;
- (2) The court refuses to accept any of my pleas of guilty;
- (3) The court sets aside any of my pleas of guilty for whatever reason, including upon my request, before sentence is announced;
- (4) I fail to satisfy any material term of this agreement; or
- (5) I fail to plead guilty as required by this agreement at a rehearing should one occur.

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 all pay and allowances 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 (i.e., any act or omission in violation of the UCMJ which constitutes a material breach of this agreement) 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 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 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. Furthermore, I agree that, should a punitive discharge be adjudged, I will submit, within 10 days from the date of the conclusion of my trial, a written request to be placed on appellate leave.

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

A. I agree to unconditionally waive my right to an Article 32, UCMJ, Pretrial Investigation. I fully understand the nature and purpose of an Article 32, UCMJ, Pretrial Investigation and the rights that I would have at such a hearing. I understand that upon acceptance of this agreement, the charges and specifications may be referred to trial by General Court-Martial, without an Article 32, UCMJ, Pretrial Investigation or hearing.

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

C. I agree not to request, at government expense, the presence of any witness located outside a 100-mile radius of Camp Pendleton, CA. This provision does not interfere with my ability to present an effective defense case in extenuation and mitigation. I intend to use alternative means to present this material.

D. I agree to enter into a stipulation of fact detailing the circumstances of the offenses to which I am pleading guilty. 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 hearing.

E. I and the Government agree not to object to the admission of documentary evidence, including, but not limited to, victim and command impact statements, video-taped interviews conducted by NCIS, and written statements provided by Staff Sergeant Munoz, on the merits and/or during the pre-sentencing hearing on the basis of authenticity, foundation, hearsay, or confrontation. The parties agree that they retain the right to object to any documentary evidence on the basis of relevance.

F. I further agree to waive my right to an administrative discharge board resulting from the above charges. I fully understand that any administrative discharge will be characterized in accordance with service regulations, and may be under other than honorable conditions. My waiver is voluntary and nobody has pressured or forced me to give up this right. I do not waive my right to submit statements, documents or other evidence to the separation authority in rebuttal to any proposed separation.

G. This Agreement is made with the specific understanding that the Government will require Staff Sergeant Eduardo Munoz to register as a sex offender pursuant to SECNAVINST 5800.14A . Staff Sergeant Munoz has been fully advised and understands the consequences of such registration and specifically agrees thereto.

16. I agree to plead as follows:

**PLEAS OF THE ACCUSED**

**CHARGE**

**PLEAS**


<b><u>CHARGE</u></b>	<b><u>PLEAS</u></b>
<b><u>Charge I, Article 92</u></b>	GUILTY.
Specification 1: having knowledge of a lawful order issued on or about 6 December 2010, by Sergeant Major Donald K. Williams, United States Marine Corps, to wit: "stay away from any personnel from Bravo Company to include Drill Instructors and Recruits" or words to that affect, an order which it was his duty to obey, did, at or near Camp Pendleton, California, on or about 10 December 2010, fail to obey the same	GUILTY.
Specification 2: violate a lawful general order, to wit: Paragraph 3007, Section 2, Marine Corps Recruit Depot Order 1510.30N, dated 1 December 2008, by wrongfully touching the	GUILTY.

genital area of private Jonathan M. Locicero	
<b><u>Charge II, Article 107</u></b>	NOT GUILTY.
Specification 1: with intent to deceive, make to Special Agent Tony Flores, United States Naval Criminal Investigative Service, an official statement, to wit: "I told recruit Lebarton to tell the platoon that I apologize of whatever wrong doing I did, if I did any," what statement was totally false, and was then known by the said Staff Sergeant Eduardo Munoz to be so false.	NOT GUILTY.
<b><u>Charge III, Article 120</u></b>	GUILTY.
Specification 1: engage in sexual contact with Private Jonathan M. Locicero, to wit: putting his hand in Private Jonathan M. Locicero's pants and rubbing his genital area by placing Private Jonathan M. Locicero in fear through abuse of his military position	NOT GUILTY.
Specification 2: engage in sexual contact with Private Jonathan M. Locicero, to wit: rubbing the genital area of Private Jonathan M. Locicero through the outside of Private Jonathan M. Locicero's pants by placing him in fear through abuse of his military position	NOT GUILTY.
Specification 3: engage in sexual contact with Private Jonathan M. Locicero, to wit: putting his hand in Private Jonathan M. Locicero's pants and rubbing his genital area, and such sexual contact was without the legal justification or lawful authorization and without the permission of Private Jonathan M. Locicero	GUILTY.
Specification 4: engage in sexual contact with Private Jonathan M. Locicero, to wit: rubbing the genital area of Private Jonathan M. Locicero through the outside of his pants, and such sexual contact was without the legal justification or lawful authorization and without the permission of Private Jonathan M. Locicero	NOT GUILTY.

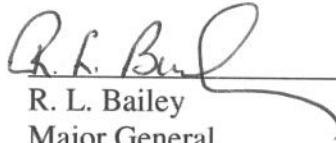
<b><u>Charge IV, Article 128</u></b>	NOT GUILTY.
Specification 1: unlawfully touch the genitals of Private Jonathan M. Locicero by placing his hand down Private Jonathan M. Locicero's pants	NOT GUILTY.
Specification 2: unlawfully rub the genitals of Private Jonathan M. Locicero through Private Jonathan M. Locicero's pants	NOT GUILTY.
Specification 3: unlawfully touch Private Jonathan M. Locicero on his thigh with his hand	NOT GUILTY.
Specification 4: unlawfully touch Private Jonathan M. Locicero on his lips with his hands	NOT GUILTY.
<b><u>Charge V, Article 134</u></b>	GUILTY.
Specification: wrongfully impede an investigation in the case of sexual assault allegations against himself, by asking potential witnesses their knowledge of the investigation and asking them to lie should they be questioned	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.

Accused:  Date: 3 Feb 10  
Eduardo Munoz  
Staff Sergeant  
U.S. Marine Corps

Defense Counsel:  Date: 3 Feb 10  
Christian P. Hur  
Captain  
U.S. Marine Corps

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

Convening Authority:  Date: 7 Feb 11  
R. L. Bailey  
Major General  
U.S. Marine Corps