IN A GENERAL COURT-MARTIAL OF THE UNITED STATES
ARMY TRIAL JUDICIARY, FIRST JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	**STIPULATION OF FACT**
	)	
WILL, Joshua K.	)	
PFC, U.S. Army	)	**16 February 2010**
D Company, 1st Battalion	)	
3d U.S. Infantry (The Old Guard)	)	
Fort Myer, Virginia 22211	)	

The United States and the defense, with the express consent of the Accused, stipulate that the following facts are true, susceptible of proof, and admissible in evidence. These facts may be considered by the Military Judge and any appellate authority in determining the providence of the Accused's pleas of guilty and may then be considered by the sentencing authority and on appeal in determining an appropriate sentence, even if the evidence of such facts is deemed otherwise inadmissible. The Accused expressly waives any objections he may have to the admission of these facts into evidence at trial under the Military Rules of Evidence, the Rules for Courts-Martial, the U.S. Constitution, or applicable case law. Any objection to or modification of this stipulation of fact without the consent of the Trial Counsel and the Accused amounts to a breach of the pretrial agreement from which the convening authority may withdraw.

1. **The Accused:**

Private First Class Joshua K. Will, hereinafter the Accused, entered active duty on 17 July 2008. At all times relevant to the charged offenses, the Accused was a Soldier on active duty in the U.S. Army. Between 18 November 2008 and 2 April 2009, the Accused was assigned, as an Infantryman (11B), to Headquarters and Headquarters Company (HHC), 1st Battalion, 3d U.S. Infantry (The Old Guard). On 2 April 2009, the Accused was transferred from HHC to D Company, 1st Battalion, 3d U.S. Infantry (The Old Guard). See Encl 1. This Court has jurisdiction over the Accused and all charged offenses.

2. **Background:**

Between 1 June 2009 and 21 September 2009, the Accused used, distributed, and introduced onto a U.S. military installation illegal drugs, lied to military police officers, and disobeyed a lawful order of his commander, while each act escalated in seriousness as time progressed. The Accused initially started using Heroin, Codeine, Morphine, and Marijuana. Soon, the Accused's desire to indulge in the effects of these drugs led him to the commission of additional and more

serious crimes, no longer was he simply a drug user but now a drug dealer. The Accused not only used the drugs he intended to sell, but actually sold them to a Soldier within his own company and attempted to sell them to Soldiers on Fort Myer, Virginia.

Prior to 17 June 2009, the Accused travelled off of the Fort Myer Military Installation, Fort Myer, Virginia, to wrongfully purchase what the Accused believed to be un-prescribed and illegally obtained Oxycontin pills. Initially, the Accused contacted a man named "Milton" who picked the Accused up at the Naylor Road Metro Stop, located in Temple Hill, Maryland, and drove him three miles to his drug dealer's apartment complex. The Accused waited in the car while "Milton" went inside and purchased the drugs for the Accused. The Accused paid approximately $20 per pill and stored them in his on-post barracks room, located in Building 416, Sheridan Avenue, Fort Myer, Virginia. When the Accused's illegal drug habit began, he only used the drugs on the weekends. However, the Accused's habit grew and he began using these illicit drugs during the week for approximately one month prior to being caught after an urinalysis.

On 17 June 2009, the Accused, as the subject of a probable cause search authorized by his Company Commander, CPT Andrew Croy, provided a urine sample that later was tested by the Department of the Army Forensic Toxicology Drug Testing Laboratory (FTDTL) located at Fort Meade, Maryland. The FTDTL produced and released a urinalysis report which indicated the Accused tested positive for Heroin, Codeine, and Morphine. The Accused had 388 Nanograms (NG) per Milliliter (ML) of Heroin in his urine at the time of testing. Further, the report indicated that the Accused had 4,028 NG/ML of Codeine and 63,305 NG/ML of Morphine in his urine as well. See Encls 2 and 3. These high numbers indicate the amount of the illicit drug per milliliter concentrated in the Accused's urine. The Department of Defense (DOD) threshold level for Heroin is 10 NG/ML. The Accused concentration, of 388 NG/ML, was so high that it was beyond the traceable scale of the testing instruments. The DOD thresholds for Codeine and Morphine are 2,000 NG/ML and 4,000 NG/ML, respectively. The FTDTL confirmed the presence of drugs in urine samples using the gas chromatography/mass spectrometry (GC/MS). Generally, the traceable lifespan of opiates in urine is approximately two days. Therefore, these high results confirm that the Accused was a chronic user and intentionally ingested these illegal drugs between 14 June 2009 and 17 June 2009.

The U.S. Army Criminal Investigation Division (CID) Drug Suppression Team (DST), located at Fort Belvoir, Virginia was contacted to interview the Accused. Investigator Kurt Bowers interviewed the Accused on 21 July 2009 at the Fort Belvoir CID office. During the interview the Accused admitted to taking illegally what he believed to be Oxycontin, numerous times for the three weeks preceding the urinalysis, and not because he was in any physical pain or because it was prescribed to him, but rather, because he was upset that his fiancée broke up with him.

Nearly a month after CID initiated its investigation and interviewed the Accused, thus providing him notice the command was tracking his Heroin, Codeine, and Morphine use, the Accused committed further misconduct to feed his on-going and deliberate pursuit to get high. On 21 August 2009, the Accused filed a false police report stating that his bank account was wrongfully debited by $1,033.00 and that he had not used his Automated Teller Machine (ATM) card since 3 August 2009. As a result of his report, Detective Brian McKendrick was assigned to investigate the incident. As Detective McKendrick pursued leads, he obtained the Accused's bank records which indicated that the Accused lied to the Military Police when he made his theft report. The Accused, in fact, used his ATM card since 3 August 2009, and his only purpose for filing the report was to have the police report to assist the Accused in filing a totally false civilian claim with his bank for reimbursement of expended funds.

During the MP investigation and on 3 September 2009, the Accused, slept through formation when he was required to be present. Being concerned for the Accused's well-being, the Accused's Platoon Leader and Platoon Sergeant obtained the Accused's barrack's room key, entered his room, and found him sleeping. The Platoon Sergeant attempted to wake the Accused by stating his name and making loud noises. After multiple attempt of waking the Accused, he finally woke up and began yelling at and calling his Platoon Sergeant a "dick." After leaving his barracks room and entering the company area, the Accused ran out the front doors and jumped into a waiting car, which quickly drove off. The next day, the Accused's Company Commander, CPT Andrew Croy, counseled the Accused and placed conditions on his liberty by ordering the Accused not to go off post or to consume alcohol. This order was given to the Accused to ensure his safety, ensure his presence at first formation and throughout the duty day, and prevent the Accused from committing further misconduct. See Encl 4. However, only six days into the lawful order, the Accused deliberately ignored the order, went off-post, and contradicted the very purpose of the order by committing serious acts of misconduct.

While waiting to receive the first read of a Field Grade Article 15 for his first drug use on or about 17 June 2009, the Accused sold one gram of Cocaine to Private (PV2) Daniel Cooper for about $60. Both PV2 Cooper and the Accused are in the same company. They both live in the barracks on Fort Myer, Virginia and this transaction occurred while on Fort Myer. The Accused sold enough Cocaine to PV2 Cooper that he was able to use it twice. PV2 Cooper first used the Cocaine he purchased from the Accused, the same night the Accused sold him the Cocaine. The following morning, PV2 Cooper used the remaining amount before the duty day began. As a result of using the Cocaine that the Accused sold to PV2 Cooper, he tested positive for Cocaine on 16 September 2009 only two days after the Accused's company commander warned the Accused not to engage in any further misconduct, especially while pending a Field Grade Article 15. Subsequently, during an interview with CID, PV2 Cooper admitted to using the Cocaine that he purchased from the Accused on 15 September 2009. Additionally, PV2 Cooper stated that he

has only used Cocaine twice before while being in the U.S. Army and both times had been with the Accused. See Encl 6.

On 20 September 2009, the Accused received a phone call from his off-post drug dealer, named "Diego" who is a regular supplier of Ecstasy to the Accused, asking the Accused if he would like to buy some Ecstasy and other drugs. Completely disregarding the order he received and affirmatively acknowledged on 14 September 2009 not to go off-post, the Accused sat behind the wheel of his black Chevy Impala and drove off-post to "Diego's" house. The Accused violated his company commander's lawful order to obtain more drugs to feed his progressing desire to use illegal drugs and ultimately to sell the drugs while on Fort Myer, Virginia. "Diego" handed the Accused ten tablets of Ecstasy, also known as Methlenedioxymethamphetamine (MDMA), a Schedule I controlled substance. In addition to the ten tablets of Ecstasy, "Diego" also supplied the Accused with a quarter-ounce of Marijuana. The Accused added his newly acquired tablets of Ecstasy to a bag which already contained ten tablets of Ecstasy that he previously obtained from "Diego." The drug's that "Diego" supplied to the Accused that evening were the first installment of what the Accused described as a "cartel" type transportation, distribution, and profit making operation. Before leaving "Diego's" house, they discussed the potential for the Accused to become part of a drug distribution network that "Diego" was heavily involved in by the Accused being the "go-to" guy for "Diego's" customers on Fort Myer, Virginia as the distributor of "Diego's" drugs to Soldiers on Fort Myer, Virginia. On 20 September 2009, the Accused intended to show "Diego" that the Accused could actually effectively distribute "Diego's" drugs and stop being a simple drug user and now a drug dealer.

Soon after this conversation ended, the Accused proceeded back to Fort Myer. The Accused passed through the gate and parked in the Summerall parking lot, which is centerally located in front of four barracks buildings and within the main thoroughfare of pedestrian traffic. While sitting in his car, sampling some of the drugs he recently acquired from "Diego", the Accused was approached by Private First Class (PFC) Roger Halford and Private (PFC) Chad Thatcher. PFC Halford could see the Accused smoking a Marijuana cigarette and immediately detected the strong, distinct odor of Marijuana coming from the Accused's car. During this conversation, the Accused, with the bag of Ecstasy within arm's reach and ready to sell to anyone willing to buy from him, asked PFC Halford if he would like to buy some Ecstasy or if he knew anyone that would like to buy some Ecstasy. PFC Halford said no and immediately reported the incident to the Military Police. Shortly thereafter, Investigator Bowers responded to the Summerall Parking lot. Investigator Bowers obtained consent from the Accused to search his car. During the search, the Accused spontaneously stated to Investigator Bowers that he would find Marijuana and Ecstasy. Investigator Bowers found the bag containing twenty Ecstasy pills and two Marijuana cigarettes. See Encl 7. At this point, Investigator Bowers took the Accused into custody and transferred him to the Fort Myer Provost Marshal's Office. The Accused admitted to the Military Police that he attempted to distribute Ecstasy and used Marijuana.

The following morning the Fort Myer Provost Marshal's Office released the Accused back to his platoon sergeant. The Company Commander, determined that the Accused warranted pre-trial confinement (PTC) and ordered the Accused into the Quantico Brig on 21 September 2009. Shortly after being placed into PTC the Accused tested positive for Marijuana during an administrative urinalysis. See Encl 8. This was a result of an administrative inspection conducted on 8 October 2009 at the Quantico Confinement Facility. This test was conducted nearly two weeks after the Accused admitted to using Marijuana. The typical life span for Marijuana in a chronic user (more than five Marijuana cigarettes per day) is approximately fourteen to eighteen days. See Encl 8.

The Accused is a member of D Company, 1st Battalion, 3d U.S. Infantry (The Old Guard). In addition to the unit's ceremonial duties as a marching and funeral support company, D Company often participates in field exercises. During these field exercises, the unit trains its Soldiers on rifle marksmanship with live ammunition. As a ceremonial unit, The Old Guard provides ceremonial support to events that are highly visible and of great diplomatic importance. For at least one of the three weeks prior to the Accused testing positive for use of Heroin, Codeine, and Morphine, D Company was the company responsible for performing all ceremonial honors for fallen Soldiers and veterans at Arlington National Cemetery.

3. Charges:

a. Charge I, The Specification: Violation of the UCMJ, Article 80, Attempted Distribution of Ecstasy:

On 20 September 2009, the Accused attempted to distribute some number of pills of Ecstasy to PFC Roger Halford. At that time, the Accused was sitting in his black Chevy Impala that was parked in the Summerall parking lot on Fort Myer, Virginia. The parking lot is located within a one minute walk from all barracks, on Fort Myer, which house Soldiers from the 3d U.S. Infantry (The Old Guard). These barracks house approximately five hundred Soldiers. The parking lot that the Accused chose to use as his distribution point is the main parking lot used by Soldiers from Bravo, Delta, Echo, and Headquarters and Headquarters Companies of the 3d U.S. Infantry (The Old Guard). The Soldiers going to their cars that evening passed by the Accused and had the opportunity to purchase the Accused's Ecstasy. See Encl 9. The Accused sat purposefully and patiently in his car, smoking a sample of the quarter-ounce of Marijuana that "Diego" sold him, waiting for any Soldier to approach him so that he could attempt to distribute Ecstasy pills that he had at the ready. At his first opportunity and when PFC Roger Halford approached his car, the Accused asked him "would you like to buy some Ecstasy" to which PFC Halford said "no." The Accused persisted in his pursuit to distribute Ecstasy and become the "go-to" guy that "Diego" envisioned him to be by again asking PFC Halford if he "knew anyone

else who would want some Ecstasy" and again PFC Halford said "no." Immediately, after this conversation, PFC Halford watched the Accused start his car and drive south on Sheridan Avenue to find another potential buyer of his Ecstasy, while still smoking the Marijuana cigarette he rolled. PFC Halford immediately reported the incident to the Military Police.

The actions of the Accused were voluntary and were of his own free will. The Accused intended to distribute Ecstasy when he asked PFC Halford if he would like to purchase some pills of Ecstasy. The steps the Accused took, that is buying the drugs, transporting the Ecstasy onto Fort Myer, holding them in his car at the ready, pre-positioning his car at the most advantageous point to sell illegal drugs, and twice asking an individual if he would like to purchase the Accused's Ecstasy are all substantial steps and a direct movement toward the commission of distribution of Ecstasy. Had it not been for PFC Halford's refusal, the Accused would have accomplished his intended distribution of Ecstasy. The Accused knew what he was trying to sell was Ecstasy because he had used Ecstasy in the past, as well as throughout 20 September 2009, he recognized the pills as being Ecstasy, and he bought the Ecstasy from his off-post drug dealer who has provided him illegal drugs in the past. See Encl 7. At no point did the Accused have the authority, believe he was authorized, or have any legal justification or excuse for attempting to distribute Ecstasy.

b. Charge II, Specification 1: Violation of the UCMJ, Article 112a, Wrongful Use of Heroin:

Between 14 June 2009 and 17 June 2009, the Accused wrongfully used Heroin. For approximately three weeks prior to the 17 June 2009, the Accused wrongfully used what he believed to be un-prescribed Oxycontin. In fact, the pills contained Heroin, Codeine, and Morphine. The Accused obtained the drugs from a civilian named "Milton" and not a medical doctor or a pharmacy with a legitimate authority to prescribe opiates. Initially, the use of the illegal drugs was a coping mechanism for the Accused. However, soon that purpose was no longer a coping mechanism but a hobby for the Accused. He enjoyed the intoxicating effects he felt whenever he took drugs. Although he was never assigned to a mission during this period, he rendered himself incapable of performing the mission of the 3d U.S. Infantry (The Old Guard). Whenever, the Accused wanted a fix, he would contact "Milton" and painstakingly travel approximately forty minutes one way on the metro, changing trains once, and finally arriving at the Naylor Road Metro Stop in Temple Hill, Maryland. The Accused would then have to drive another three minutes with "Milton" to "Milton's" drug dealer's apartment. The Accused would return to Fort Myer, Virginia where he would begin his indulgence in his most recent illicit acquisition. Shortly after consuming the drug, the Accused started to get high by feeling his breathing slow down and becoming more relaxed.

On 17 June 2009, the Accused provided a urine sample to his chain of command as a result of a lawfully authorized probable cause search. This sample was sent to the FTDTL in Fort Meade, Maryland who tested the urine. The FTDTL, as a quality control measure, attached a different quality control number to the sample and tested the batch a second time. In this case, the FTDTL used its quality control systems, and the results consistently indicated that the Accused had Heroin in his urine. On 17 July 2009, the company received the results of the Accused first urinalysis. These results indicated that the Accused tested positive for Heroin. See Encls 2 and 3.

The Accused knew he was using illegal substances because he assumed the risk that the illicit pills he obtained from his drug dealer contained other drugs, such as Heroin. The Accused felt the effects of the drug on his body. Further, the Accused's use of the drug was wrongful because he knew that the pills he obtained were illegal because, if they were actually what the Accused thought he was purchasing, then they were a controlled substance and he obtained them through "Milton", a civilian illegal drug dealer that the Accused had purchased from before. Moreover, the Accused did not have a prescription nor was it medically necessary for him to use this drug. The Accused knowingly, consciously, and consistently used this drug for three weeks prior to the urinalysis. Moreover, the Accused knew what he was trying to obtain is a controlled substance. The simple fact that he was trying to illegally obtain a controlled substance imputes that any other drugs mixed with that controlled substance are also knowingly ingested. The use of Heroin was wrongful in that the Accused did not have a prescription to use Oxycontin or any of the other drugs he tested positive for, nor did he have the legal justification or excuse to use Heroin. The wrongful use of this drug was easily avoidable by the Accused not ingesting the pills he purchased from "Milton." At all times the Accused was in a position not to use the drug.

c. Charge II, Specification 2: Violation of the UCMJ, Article 112a, Wrongful Use of Codeine:

Between 14 June 2009 and 17 June 2009, the Accused wrongfully used Codeine. For approximately three weeks prior to the 17 June 2009, the Accused wrongfully used what he believed to be un-prescribed Oxycontin. In fact, the pills contained Heroin, Codeine, and Morphine. The Accused obtained the drugs from a civilian named "Milton" and not a medical doctor or a pharmacy with a legitimate authority to prescribe opiates. Initially, the use of the illegal drugs was a coping mechanism for the Accused. However, soon that purpose was no longer a coping mechanism but a hobby for the Accused. He enjoyed the intoxicating effects he felt whenever he took drugs. Although he was never assigned to a mission during this period, he rendered himself incapable of performing the mission of the 3d U.S. Infantry (The Old Guard). Whenever, the Accused wanted a fix, he would contact "Milton" and painstakingly travel approximately forty minutes one way on the metro, changing trains once, and finally arriving at the Naylor Road Metro Stop in Temple Hill, Maryland. The Accused would then have to drive

another three minutes with "Milton" to "Milton's" drug dealer's apartment. The Accused would return to Fort Myer, Virginia where he would begin his indulgence in his most recent illicit acquisition. Shortly after consuming the drug, the Accused started to get high by feeling his breathing slow down and becoming more relaxed.

On 17 June 2009, the Accused provided a urine sample to his chain of command as a result of a lawfully authorized probable cause search. This sample was sent to the FTDTL in Fort Meade, Maryland who tested the urine. The FTDTL, as a quality control measure, attached a different quality control number to the sample and tested the batch a second time. In this case, the FTDTL used its quality control systems, and the results consistently indicated that the Accused had Codeine in his urine. On 17 July 2009, the company received the results of the Accused first urinalysis. These results indicated that the Accused tested positive for Codeine. See Encls 2 and 3.

The Accused knew he was using illegal substances because he assumed the risk that the illicit pills he obtained from his drug dealer contained other drugs, such as Codeine. The Accused felt the effects of the drug on his body. Further, the Accused's use of the drug was wrongful because he knew that the pills he obtained were illegal because, if they were actually what the Accused thought he was purchasing, then they were a controlled substance and he obtained them through "Milton", a civilian illegal drug dealer that the Accused had purchased from before. Moreover, the Accused did not have a prescription nor was it medically necessary for him to use this drug. The Accused knowingly, consciously, and consistently used this drug for three weeks prior to the urinalysis. Moreover, the Accused knew what he was trying to obtain is a controlled substance. The simple fact that he was trying to illegally obtain a controlled substance imputes that any other drugs mixed with that controlled substance are also knowingly ingested. The use of Codeine was wrongful in that the Accused did not have a prescription to use Oxycontin or any of the other drugs he tested positive for, nor did he have the legal justification or excuse to use Codeine. The wrongful use of this drug was easily avoidable by the Accused not ingesting the pills he purchased from "Milton." At all times the Accused was in a position not to use the drug.

d. Charge II, Specification 3: Violation of the UCMJ, Article 112a, Wrongful Use of Morphine:

Between 14 June 2009 and 17 June 2009, the Accused wrongfully used Morphine. For approximately three weeks prior to the 17 June 2009, the Accused wrongfully used what he believed to be un-prescribed Oxycontin. In fact, the pills contained Heroin, Codeine, and Morphine. The Accused obtained the drugs from a civilian named "Milton" and not a medical doctor or a pharmacy with a legitimate authority to prescribe opiates. Initially, the use of the illegal drugs was a coping mechanism for the Accused. However, soon that purpose was no longer a coping mechanism but a hobby for the Accused. He enjoyed the intoxicating effects he

felt whenever he took drugs. Although he was never assigned to a mission during this period, he rendered himself incapable of performing the mission of the 3d U.S. Infantry (The Old Guard). Whenever, the Accused wanted a fix, he would contact "Milton" and painstakingly travel approximately forty minutes one way on the metro, changing trains once, and finally arriving at the Naylor Road Metro Stop in Temple Hill, Maryland. The Accused would then have to drive another three minutes with "Milton" to "Milton's" drug dealer's apartment. The Accused would return to Fort Myer, Virginia where he would begin his indulgence in his most recent illicit acquisition. Shortly after consuming the drug, the Accused started to get high by feeling his breathing slow down and becoming more relaxed.

On 17 June 2009, the Accused provided a urine sample to his chain of command as a result of a lawfully authorized probable cause search. This sample was sent to the FTDTL in Fort Meade, Maryland who tested the urine. The FTDTL, as a quality control measure, attached a different quality control number to the sample and tested the batch a second time. In this case, the FTDTL used its quality control systems, and the results consistently indicated that the Accused had Morphine in his urine. On 17 July 2009, the company received the results of the Accused first urinalysis. These results indicated that the Accused tested positive for Morphine. See Encls 2 and 3.

The Accused knew he was using illegal substances because he assumed the risk that the illicit pills he obtained from his drug dealer contained other drugs, such as Morphine. The Accused felt the effects of the drug on his body. Further, the Accused's use of the drug was wrongful because he knew that the pills he obtained were illegal because, if they were actually what the Accused thought he was purchasing, then they were a controlled substance and he obtained them through "Milton", a civilian illegal drug dealer that the Accused had purchased from before. Moreover, the Accused did not have a prescription nor was it medically necessary for him to use this drug. The Accused knowingly, consciously, and consistently used this drug for three weeks prior to the urinalysis. Moreover, the Accused knew what he was trying to obtain is a controlled substance. The simple fact that he was trying to illegally obtain a controlled substance imputes that any other drugs mixed with that controlled substance are also knowingly ingested. The use of Morphine was wrongful in that the Accused did not have a prescription to use Oxycontin or any of the other drugs he tested positive for, nor did he have the legal justification or excuse to use Morphine. The wrongful use of this drug was easily avoidable by the Accused not ingesting the pills he purchased from "Milton." At all times the Accused was in a position not to use the drug.

e. Charge II, Specification 4: Violation of the UCMJ, Article 112a, Wrongful use of Marijuana:

On 20 September 2009, the Accused wrongfully used Marijuana. After driving to "Diego's" house to obtain the tablets of Ecstasy and a quarter ounce of Marijuana, the Accused returned to the Fort Myer Military Installation and began to smoke one Marijuana cigarette that he rolled in his car using the Marijuana he obtained from "Diego." Shortly after lighting his Marijuana cigarette and inhaling the Marijuana smoke, PFC Roger Halford approached the Accused's car. PFC Halford saw the Accused holding the lit Marijuana cigarette and smelled the strong odor of Marijuana coming from the Accused's car. PFC Halford knew it was Marijuana because of the distinct smell of Marijuana and his prior drug use before entering the military. Once PFC Halford denied the Accused's two requests to buy Ecstasy, the Accused started his car and drove south on Sheridan Avenue to find other potential buyers. To give himself more time to finish his Marijuana cigarette, the Accused continued to drive around the Fort Myer Military Installation and continued to smoke.

The Accused knew the use of the Marijuana was wrongful because he purposefully selected and purchased it from his drug dealer "Diego" and he did not have any prescription or medical authority to use Marijuana. During an intake urinalysis for entering PTC, the Accused tested positive for Marijuana. The Jacksonville Forensic Toxicology Laboratory confirmed by immunoassay that the Accused had 127 NG/ML of delta-9-tetrahydrocannabinol (THC) in his system. See Encl 8. The DOD threshold for this drug using this test is 50 NG/ML. The results of this forensic toxicology report indicate that the Accused had a substantially higher amount of Marijuana in his system than what the DOD uses as the threshold to declare a sample negative. The fact that the Accused's sample had two and one half times of Marijuana content than the threshold amount in his system several days after smoking the illegal drug, shows that the Accused is a chronic user of Marijuana. The Accused specifically knew the Marijuana he received from "Diego" was, in fact, Marijuana, which is why he personally rolled the cigarette and smoked the Marijuana cigarette while sitting in his car. The Accused further smoked the cigarette on his own volition and was not forced to or under the influence of any other substance that would impair his conscious state. The entire time the Accused was using the Marijuana he was on the Fort Myer Military Installation. At no point did the Accused have any legal justification or excuse for the use of this drug. The Accused could have prevented the use of this drug by not purchasing it from "Diego" and not personally rolling and choosing to smoke the Marijuana while on a military installation and attempting to distribute Ecstasy.

f. Charge III, The Specification: Violation of the UCMJ, Article 92, Violation of a Lawful Order:

On 3 September 2009, the Accused failed to report to first formation and while being escorted back to the company from his barracks room, he spontaneously ran away, jumped in a car, and left post. The next day, out of concern for the well-being of the Accused and the need to maintain good order and discipline within his unit, the Company Commander, CPT Andrew Croy issued a written order to the Accused, which placed conditions on the Accused's liberty.

CPT Croy used a DA Form 4856 Counseling Form to provide written notice of this order. Within this written counseling, the Accused was ordered not to go off-post. The Accused was further counseled that continued misconduct could potentially result in adverse action. See Encl 4. On 20 September 2009, the Accused, in his continuing progression of worsening misconduct, violated this order by knowingly driving off-post to "Diego's" house to obtain illegal drugs that he eventually would attempt to distribute to Soldiers while on a military installation.

The Accused had a specific duty to follow this order because it was issued directly to the Accused by his commanding officer and the order was necessary to safeguard and protect the morale, discipline, and usefulness of members of the command. The Accused was fully aware of the order not to go off-post because he was given the order in-person and contemporaneously acknowledged receipt of the counseling in writing. This order was necessary to ensure that the Accused would continue to appear at formations, perform his duties, and attend his ASAP meetings. The Accused could have easily complied with this order by simply remaining on-post and not committing subsequent misconduct. If the Accused remained on-post and improved his conduct, the Company Commander would have rescinded the order allowing the Accused to go off-post. However, in this case, the Company Commander did not rescind the order and the Accused's behavior did not improve but rather became worse. Instead, without legal justification or excuse, the Accused drove off-post to obtain illegal drugs that he would eventually introduce into the Fort Myer Military community.

g. Additional Charge I, The Specification: Violation of the UCMJ, Article 107, False Official Statement:

In between the Accused's multiple illegal drug uses and prior to being caught introducing and attempting to distribute illicit drugs on Fort Myer, Virginia, the Accused entered the Provost Marshal's Office located on Fort Myer, Virginia and reported the following lie to Specialist (SPC) Andrew Vieth: the Accused's ATM card was missing and his bank account was overdrawn by $1,033.00 dollars, which included a multitude of over-draft fees. See Encl 10. On 21 August 2009, The Accused continued his lie by falsely stating that he had not used his ATM card since 3 August 2009 and discovered that it was missing on 18 August 2009. The Accused chose to make this false statement to the Military Police because on 20 August 2009, the Accused contacted his bank, Armed Forces Bank, and they told him that his account was over drafted and that if he felt a crime had been committed he needed to report it to the police. The Accused deliberately chose to file the false statement in order to substantiate his claim with his bank.

Upon receiving the false report, Detective Brian McKendrick, a civilian investigator with the Fort Myer Military Police Investigations Unit, began investigating the incident. During his investigation, Detective McKendrick obtained the Accused's bank records from Armed Forces Bank, which were associated with the Accused's account number and noted that between 3 August 2009 and 17 August 2009, there were eight withdrawals made at various ATM locations

between Fort Myer, Virginia and the District of Columbia. The bank records obtained by Detective McKendrick show that on 17 August 2009 a debit posted on the account in the amount of $103.00 that was withdrawn from the Chevy Chase Bank in Anacostia, Maryland. This particular ATM was equipped with a video surveillance system that captured images of the user's face and upper torso. An image retrieved on 14 August 2009, from that ATM shows the image of the Accused's face and upper chest. The Accused was wearing a black beret and the Army Combat Uniform. Any reasonable person could identify the ATM user's face in the image was the same face as the Accused. Also, at the lower left hand corner of the image, the viewer can establish that the name tape on the uniform reads as "Will." See Encl 12. On 17 August 2009, the Accused withdrew $100.00 from that ATM located in Anacostia, Maryland. See Encl 11. In addition to the $100.00 that was withdrawn, the Accused was charged a $3.00 ATM fee. These facts show that the payee of the funds was actually the Accused, as identified by the image. Additionally, this shows that throughout the period of time that the Accused lied about his ATM card missing, he maintained his ATM card in his possession and actively used it to withdraw funds.

The Accused deliberately lied to SPC Vieth at the Fort Myer PMO in order to cause the PMO to investigate his purported story and therefore substantiate his false allegation at his bank and have the Armed Forces Bank repay $1,033.00 to the Accused. The Accused did this with the intent to deceive SPC Vieth and the Military Police to cause them to investigate and report that the Accused's card was stolen and the money wrongfully withdrawn from his account. As a result of receiving this report, SPC Veith discharged his duties as the Desk Officer and contacted Detective Brian McKendrick to further investigate. The Accused's statement on 21 August 2009 was totally false, in that he never lost control or possession of his ATM card and continued to withdraw money, and therefore caused his own bank account to be over drafted by $1,033.00. At the time he made this statement, the Accused was fully aware that he was making a totally false statement and was intentionally deceitful. At no point did the Accused have any authorization or legal justification or excuse to make this false report.

h. Additional Charge II, Specification 1: Violation of the UCMJ, Article 112a, Wrongful Possession of Marijuana:

On 20 September 2009, the Accused met "Diego" at an off-post location. "Diego" gave the Accused a quarter-ounce of Marijuana for the Accused to use or sell. After receiving these illegal drugs, the Accused drove back to Fort Myer, Virginia. Almost immediately upon his return to Fort Myer, the Accused decided to sample some of the Marijuana he was in possession of prior to selling his Ecstacy. The Accused rolled two different Marijuana cigarettes and started smoking only one Marijuana cigarette. During a search pursuant to the Accused being caught smoking Marijuana and attempting to distribute Ecstasy, Investigator Bowers searched the Accused's vehicle, and found the remainder of the smoked Marijuana cigarette and a separate Marijuana cigarette that the Accused had not started to smoke. Investigator Bowers later sent the

two Marijuana cigarettes to the U.S. Army Criminal Investigation Laboratory (USACIL) for testing. On 7 January 2010, USACIL reported that both the partially consumed cigarette and the other cigarette contained Marijuana. See Encl 7.

The Accused was in possession of a quarter-ounce of Marijuana and other drugs. The Accused divided his Marijuana into two different cigarettes with the intent to consume one cigarette and to possess and keep the second cigarette to consume after the first. He knew he was in possession of Marijuana because the Marijuana he used to roll his partially consumed and other Marijuana cigarettes taken from the quarter ounce that was supplied by "Diego" after the Accused asked "Diego" for Marijuana. See Encl 7. The Accused further knew that it was Marijuana because the portion he inhaled made him feel high and it had the distinct odor of Marijuana while he burned and smoked the Marijuana cigarette. The Accused did not have a legal justification, excuse, or authorization to possess this drug for any reason. The Accused does not have an on-going medical condition that allows the use of medicinal Marijuana.

i. Additional Charge II, Specification 2: Violation of the UCMJ, Article 112a, Wrongful Distribution of Cocaine

On 15 September 2009, the Accused sold to PV2 Daniel Cooper one gram of Cocaine for about $60. The Accused sold enough Cocaine to PV2 Cooper that PV2 Cooper was able to ingest the Cocaine two separate and distinct times. That evening, PV2 Cooper used about seventy-five percent of the gram of Cocaine provided to him by the Accused. The next morning, PV2 Cooper used the remaining amount of Cocaine. Shortly thereafter, CPT Croy, ordered a probable cause urinalysis of PV2 Cooper based on statements PV2 Cooper made to other Soldiers that regarding the Cocaine he bought from the Accused. Approximately one month after the probable cause urinalysis, the FTDTL returned a report, which indicated PV2 Cooper tested positive for Cocaine. See Encl 5. During a sworn statement, PV2 Cooper admitted to using Cocaine that the Accused sold to him for about $60. PV2 Cooper also admitted to using Cocaine on two occasions since joining the Army in February 2009, and both times were with the Accused. See Encl 6.

The Accused knew that he had distributed Cocaine to PV2 Cooper because he had purchased and possessed Cocaine which he deliberately distributed to PV2 Cooper in exchange for about $60. The Accused previously used Cocaine, on at least two of those occasions, with PV2 Cooper. The Accused knew what he was selling was Cocaine because it was a white, powdery substance that looked similar to the substances he had used in the past and he purchased the substance from his drug dealer after requesting to purchase Cocaine. The Accused knew the weight of the Cocaine because that was the amount he had purchased from his illegal drug dealer which he intended to sell to PV2 Cooper. The Accused was not authorized to sell or distribute Cocaine, nor was he forced in any way to distribute Cocaine. The actions of the Accused were purely of his own volition and the Accused intended to sell expeditiously illegal drugs to other

Soldier's for a profit. At no point did the Accused have a legal justification or excuse to distribute Cocaine.

j. Additional Charge II, Specification 3: Violation of the UCMJ, Article 112a, Wrongful Introduction of Ecstasy onto a Military Installation:

On 20 September 2009, and after obtaining ten tablets of Ecstasy from "Diego" and adding them to his already existing cache of Ecstasy, the Accused introduced the Ecstasy onto the Fort Myer Military Installation, Fort Myer, Virginia. The Accused accomplished this by driving off-post, buying the Ecstasy from an illegal drug dealer, and then driving through the gate onto Fort Myer, Virginia. Before driving onto post to distribute his latest resupply, the Accused ensured that the pills were Ecstasy. The Accused did this by looking at the size, color, and shape of the pills. Since having used Ecstasy in the past and buying Ecstasy from "Diego" prior to that occasion, the Accused knew that what he had obtained and was about to introduce for sale into a military community was Ecstasy. With the Ecstasy pills carefully stowed in his car, the Accused showed his military identification card to the civilian gate guards, and drove onto Fort Myer, Virginia with the intent to distribute and use the Ecstasy pills.

The introduction of the Ecstasy onto Fort Myer was wrongful because the Accused did not have authorization to transport the drugs onto the installation. He knew the drugs were illegal contraband and that at the time he drove onto the installation he knew he was in possession of an illegal substance. The Accused knew that the twenty pills in his possession were Ecstasy because they had the color and possessed distinct engraved emblems on them that typically appear on Ecstasy tablets. The pills were blue, green, and yellow in color and were about a one half of one inch in diameter. See Encl 7. The Accused transported the drugs onto Fort Myer by placing them into his car and driving through the gate and security check point onto the installation. The Accused was keenly aware of the amount of Ecstasy he was introducing onto post, because prior to that evening he already was in possession of ten tablets of Ecstasy and he knew that by obtaining ten more tablets of Ecstasy, he would have a greater amount of illegal drugs to sell to other Soldiers. The Accused lacked authority to introduce the Ecstasy onto Fort Myer and had no reasonable basis to believe he had authorization. At no point did he have any legal justification or excuse to introduce the Ecstasy onto Fort Myer.

k. Additional Charge III, The Specification: Violation of the UCMJ, Article 134, Solicitation:

On 20 September 2009, the Accused attempted to have PFC Roger Halford purchase some number of pills of Ecstasy. At that time, the Accused was sitting in his black Chevy Impala that was parked in the Summerall parking lot on Fort Myer, Virginia. The parking lot is located within a one minute walk from all barracks, on Fort Myer, which house Soldiers from the 3d U.S. Infantry (The Old Guard). These barracks house approximately five hundred Soldiers in

total. The parking lot that the Accused was using as his distribution point is the main parking lot used by Soldiers from Bravo, Delta, Echo, and Headquarters and Headquarters Companies of the 3d U.S. Infantry (The Old Guard). The Soldiers going to their cars that evening would have passed by Accused and smelt the burning Marijuana. See Encl 9. The accused sat purposefully and patiently in his car, smoking a sample of the quarter-ounce of Marijuana that "Diego" sold him, waiting for any Soldiers to approach him so that he could attempt to distribute Ecstasy pills that he had at the ready. Finally, when PFC Halford approached his car, the Accused asked him "would you like to buy some Ecstasy" to which PFC Halford said "no." PFC Halford did not use or possess the Ecstasy, despite the Accused soliciting him to purchase the illegal drugs and ingest the pills. The Accused persisted in his pursuit to distribute Ecstasy and become the "go-to" guy that "Diego" envisioned him to be by asking PFC Halford if he "knew anyone else who would want some Ecstasy" and again PFC Halford said "no." Immediately, after this conversation, PFC Halford watched the Accused start his car and drive south on Sheridan Avenue in an attempt to find other Soldiers to buy the Accused's Ecstasy, while still smoking the Marijuana cigarette he rolled. PFC Halford immediately reported the incident to the Military Police.

The Accused solicited PFC Halford to engage in the use and possession of an illegal drug. The Accused, with his supply ready for sale, asked PFC Halford specifically if he would like to buy some Ecstasy. The Accused further encouraged PFC Halford to give him the names of any other potential buyers by asking if he knew of anyone that wanted to buy some Ecstasy. By asking PFC Halford if he wanted to purchase some Ecstasy, the Accused presented PFC Halford the opportunity to commit the knowing and wrongful possession of Ecstasy, which is a violation of Article 112a, UCMJ. When the Accused asked PFC Halford if he wanted to purchase some pills of Ecstasy, the Accused did this with the intent that PFC Halford would actually buy some pills and maintain knowing possession of them. This transaction occurred in the Summerall Parking Lot on Fort Myer, Virginia just a mere minute away from the quarters of approximately two-thirds of the entire 3d U.S. Infantry Regiment. Moreover, the discussion occurred in of the presence of PFC Thatcher and it was between the Accused and PFC Halford. The Accused's solicitation to have PFC Halford use or possess Ecstasy was prejudicial to good order and discipline because the Accused actively engaged another Soldier to commit serious crimes under the UCMJ. Furthermore, this conduct was service discrediting because it is inconsistent with the qualities of service in the U.S. Army that are required of service members. The Accused placed himself in a position where he was able to solicit the sale of drugs from anyone who passed through that parking lot, anyone from a Soldier and successfully solicited PFC Halford to purchase, possess, and use Ecstasy.

4. **Stipulation to Admissibility of Evidence:**

The United States and the defense further stipulate that the following evidence is admissible at trial and the Military Judge may consider the evidence in determining the providence of the Accused's plea of guilty. The sentencing and appellate authorities may consider the evidence in determining an appropriate sentence:

Encl 1: The Accused's Enlisted Record Brief
Encl 2: DA Form 2624, 17 July 2009
Encl 3: Forensic Toxicology Report, 25 September 2009
Encl 4: DA Form 4856, 14 September 2009
Encl 5: DA Form 2624, 8 October 2009
Encl 6: DA Form 2823, 22 October 2009
Encl 7: USACIL Report, 7 January 2010
Encl 8: Forensic Toxicology Report, 12 January 2010
Encl 9: Map of Fort Myer, Virginia
Encl 10: Statement of the Accused, 21 August 2009
Encl 11: Bank Records, 21 August 2009
Encl 12: Surveillance Photograph of the Accused, 14 August 2009

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Date: 2/16/2010	Date: 20100216	Date: 18 Feb 2010