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FILED IN THE
 U.S. DISTRICT COURT
 Eastern District of Washington

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U.S. ATTORNEY
 SPOKANE, WA

7 UNITED STATES DISTRICT COURT
 8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,
 10 Plaintiff,
 11 vs.
 12 MICHAEL DAVID HEIT,
 13 Defendant.

CR-07-130-RHW
 Plea Agreement

14
 15 Plaintiff United States of America, by and through James A. McDevitt,
 16 United States Attorney for the Eastern District of Washington, and George J.C.
 17 Jacobs, III, Assistant United States Attorney for the Eastern District of
 18 Washington, and Defendant, MICHAEL DAVID HEIT, and the Defendant's
 19 counsel, Ms. Jaime M. Hawk, agree to the following Plea Agreement:

20 1. Guilty Pleas and Maximum Statutory Penalties:

21 The Defendant, MICHAEL DAVID HEIT, agrees to plead guilty to Counts
 22 1 and 2 of an Information, filed on September 17, 2007. Count 1 charges the
 23 Defendant with Use and Possession of a Forged or Altered Military Discharge
 24 Certificate, in violation of 18 U.S.C. §498. Count 2 charges the Defendant with
 25 False Claims of Military Medals, in violation of 18 U.S.C. § 704(b) and (d).

26 The Defendant, MICHAEL DAVID HEIT, understands that each offense is
 27 a Class A misdemeanor. The Defendant understands that each offense carries a
 28 maximum statutory penalty of: not more than a one-year term of imprisonment;

1 not more than a \$100,000 fine; not more than a one-year term of supervised
2 release; and a \$25.00 special penalty assessment. As a component of the sentence
3 for Count 1, the Court may order that the Defendant make restitution.

4 2. Consecutive Sentences and Violations of Supervised Release:

5 The Defendant understands that the Court has the authority to impose
6 consecutive sentences on each conviction, which sentences he would have to serve
7 one after the other. The Defendant further understands that a violation of a
8 condition of supervised release carries an additional penalty of re-imprisonment
9 for all or part of the term of supervised release, without credit for time previously
10 served on post-release supervision.

11 3. The Court is Not a Party to the Agreement:

12 The Defendant and the United States understand that the Court is not a party
13 to this Plea Agreement and may accept or reject it. The Defendant also
14 understands: that sentencing is a matter solely within the discretion of the Court;
15 that the Court is under no obligation to accept any recommendations made by the
16 United States and/or by the Defendant; that the Court will obtain an independent
17 report and sentencing recommendation from the U.S. Probation Office; and that
18 the Court may, in its discretion, impose any sentence it deems appropriate up to
19 the statutory maximum penalty.

20 The Defendant acknowledges that no promises of any type have been made
21 to him regarding the sentence the Court will impose in this matter. The Defendant
22 understands that the Court is required to consider the applicable sentencing
23 guideline range, but may depart upward or downward from the range.

24 The Defendant also understands that the Court may not accept any of the
25 parties' recommendations set forth in this Plea Agreement. However, the
26 Defendant understands further that such a circumstance does not provide him a
27 basis for withdrawing from this Plea Agreement or for withdrawing his pleas of
28 guilty.

4. Waiver of Constitutional Rights:

The Defendant understands that by entering these pleas of guilty he is knowingly and voluntarily waiving certain constitutional rights, including: (a.) The right to a jury trial; (b.) The right to see, hear and question the witnesses; (c.) The right to remain silent at trial; (d.) The right to testify at trial; and (e.) The right to compel witnesses to testify.

While the Defendant is waiving certain constitutional rights, he also understands that he will retain the right to be assisted through the sentencing process and any direct appeal by an attorney, who will be appointed at no cost if he cannot afford to hire an attorney. He acknowledges that pending pretrial motions, if any, are waived.

5. Elements of the Offense:

The Defendant acknowledges and agrees that, in order to be found guilty of Use and Possession of a Forged or Altered Military Discharge Certificate, in violation of 18 U.S.C. § 498, as charged in Count 1 of the Information; and False Claims of Military Medals, in violation of 18 U.S.C. § 704(b) and (d), as charged in Count 2 of the Information; the United States must prove the following elements beyond a reasonable doubt:

Count 1- Use and Possession of Forged or Altered Military Discharge Certificate:

First, on or about July 20, 2005, in the Eastern District of Washington, the Defendant did unlawfully use, possess, and exhibit, a certificate of discharge from military service (Form DD 214) that forged or falsely altered material facts, as described in Count 1;

Second, the Defendant knew that the certificate was forged or falsely altered.

1 *Count 2- False Claims of Military Medals:*

2 First, on or about August 18, 2005, in the Eastern District of
3 Washington, the Defendant did falsely represent himself as
4 having been awarded a Purple Heart and Silver Star;

5 Second, the Purple Heart and the Silver Star are medals and decorations
6 authorized by Congress for the Armed Forces of the United
7 States; and

8 Third, the Defendant acted knowingly.

9 6. Factual Basis and Statement of Facts:

10 The Defendant acknowledges and agrees that, in proving the elements of the
11 crimes to which he is pleading guilty, the United States can establish the following
12 facts beyond a reasonable doubt; that these facts constitute an adequate factual
13 basis for his pleas of guilty; and that for sentencing purposes neither party is
14 precluded from presenting additional facts and arguing the relevance of the facts
15 to the Sentencing Guidelines computation or sentencing generally, unless
16 otherwise prohibited by this Plea Agreement.

17 On September 15, 2005, the United States Department of Veterans Affairs
18 (VA) Police, Spokane, Washington, provided a Uniform Offense Report (UOR) to
19 the VA Office of Inspector General (OIG), Seattle Resident Office, regarding
20 MICHAEL DAVID HEIT. According to the UOR, the Veterans Affairs Medical
21 Center located in Spokane, Washington (VAMC) reported that HEIT's military
22 record, as found on a website – Stolen Valor, did not match a Report of Separation
23 From Active Duty (Form DD 214) from the United States Army that HEIT
24 presented to the VAMC on July 20, 2005. HEIT had presented the DD 214 to a
25 VAMC therapist in order to substantiate a claim of Post Traumatic Stress Disorder
26 and other injuries and to receive additional medical treatment from the VA.

27 On April 3, 2006, the OIG accessed a VA database which revealed that
28 HEIT is a veteran who served in the U.S. Army and was honorably discharged at

1 the rank of E-3. The VA database also revealed that HEIT was receiving a twenty-
2 percent service connected disability for his right knee and skeletal system. OIG's
3 review of HEIT's claim folder included a certified copy of his DD 214. The
4 certified copy of HEIT's DD 214 was inconsistent with the copy of the DD 214
5 that HEIT presented to the VAMC - Spokane on July 20, 2005. The certified copy
6 of the DD 214 did not reflect service in Vietnam, Prisoner of War (POW)
7 captivity, that he had been awarded a Purple Heart, Silver Star, and Bronze Star,
8 and that he had earned the rank of Sergeant First Class (E-7). The OIG suspected
9 that HEIT had given the VAMC a falsely altered certificate of military discharge
10 (DD 214).

11 On September 29, 2006, the VA OIG interviewed Dr. Robert Kuwik,
12 Behavior Health, VAMC - Spokane, regarding HEIT. Dr. Kuwik reported that
13 during an office visit in 2005 HEIT claimed that he was having medical problems
14 because he had been a POW in Vietnam for forty-two months. As a result of his
15 self-reported POW status, Dr. Kuwik assigned HEIT to VA Therapist Mikel
16 Stevenson for a consult regarding Post Traumatic Stress Disorder (PTSD)
17 symptoms, depression, financial stress, and attempted suicide by HEIT's son.

18 On October 4, 2006, the OIG interviewed VAMC Therapist Stevenson.
19 Stevenson recalled that during his initial consult with HEIT on May 12, 2005,
20 HEIT claimed that he was a Vietnam POW and was suffering from PTSD.
21 Stevenson asked HEIT to provide him, when he felt comfortable, with a copy of
22 his DD 214 in order to substantiate his claims of PTSD. On July 20, 2005,
23 (HEIT's sixth therapy session), HEIT provided Stevenson with an uncertified copy
24 of a DD 214 which claimed that HEIT had earned the rank of Sergeant First Class
25 (E-7), had been held as a POW in Vietnam during the period February 16, 1969, to
26 February 26, 1972, and had received the following decorations and medals, Silver
27 Star Medal, Bronze Star Medal, Purple Heart, Vietnam Service, Vietnam
28 Campaign, and Ranger Tab. Stevenson treated HEIT at the VAMC - Spokane four

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1 more times until HEIT's fraud was detected. Overall, HEIT received ten therapy
2 sessions between May 12, 2005, and August 19, 2005. The VAMC incurred a
3 total loss of \$2,069.74 for the medical services it rendered to HEIT in connection
4 with his false claims.

5 On October 5, 2006, the VA OIG interviewed HEIT regarding his military
6 service and his POW, Purple Heart, Silver Star, and Bronze Star claims. HEIT
7 stated that he has a legitimate twenty-percent service connected disability for his
8 right knee and lower back. HEIT stated that a friend created the falsely altered
9 DD 214 for him. HEIT admitted to the VA OIG that he never served in Vietnam,
10 was never a POW, and never earned the decorations reported on the DD 214.
11 HEIT admitted that he submitted the falsely altered DD 214 to VAMC Therapist
12 Stevenson in order to receive medical treatment at the VAMC. HEIT also
13 admitted that he submitted the falsely altered DD 214 to the Military Order of the
14 Purple Heart of the U.S.A., a Congressionally chartered veterans service
15 organization located in Spokane, Washington, when he asked for their assistance
16 in processing his disability claims with the VA. HEIT stated that through his
17 conduct he had dishonored his father and all those who served in the military. At
18 a subsequent interview, HEIT admitted that he started but never finished Special
19 Forces training, that he had campaigned for a seat in the State of Montana
20 legislature and had falsely represented during his campaign that he had been a
21 POW in Vietnam, and that he falsely claimed to be a retired Army Command
22 Sergeant Major in a comment he wrote for a book authored by another individual.

23 On October 9, 2006, the VA OIG interviewed John Hauck, a retired
24 Vietnam Veteran and Army helicopter pilot, about HEIT. Mr. Hauck stated that
25 HEIT told him that he was in the Army Special Forces, served in Vietnam, was a
26 helicopter pilot who had been shot down, was a POW captive and had escaped,
27 and retired as an Army Command Sergeant Major (CSM), the highest rank for an
28

1 enlisted member (E-9). HEIT also told Mr. Hauck that he was the Chairman of the
2 Constitutional Party in Montana.

3 On November 7, 2006, the VA OIG interviewed Rick Jore, Vice Chairman
4 of the Constitution Party, State of Montana. Mr. Jore stated that during a National
5 Conference in St, Louis, Missouri, HEIT claimed that he was a POW and that he
6 had his teeth knocked out while a POW at the Hanoi Hilton.

7 On November 7, 2006, the VA OIG interviewed Ben Gittings and John
8 Custer, at the Spokane, Washington branch office of the Military Order of the
9 Purple Heart of the U.S.A. These men told the VA OIG that HEIT had requested
10 the organization's assistance in completing the necessary paperwork to submit to
11 the VA in order to get his disability claim reviewed and increased. Mr. Custer
12 stated that he prepared a Statement in Support of Claim (VA Form 21-4138) for
13 HEIT based on information HEIT provided to him verbally and contained in a
14 copy of a DD 214 that HEIT exhibited to him. HEIT did not show Mr. Custer his
15 true and accurate DD 214, but showed him the falsely altered DD 214 which
16 falsely reported that HEIT had earned a Purple Heart, Silver Star, and Bronze Star,
17 had been a POW, and had earned the rank of Sergeant First Class (E-7). Mr.
18 Custer also told the OIG that HEIT verbally claimed that he had received shrapnel
19 wounds in the war. As a result of HEIT's deceit and trickery, HEIT made the
20 Military Order of the Purple Heart of the U.S.A. an unwitting participant in his
21 scheme by causing it to submit a false VA Form 21-4138 to the VA.

22 The Purple Heart is a United States military decoration awarded in the name
23 of the President to those members of the armed forces who have been wounded or
24 killed in action by weapon fire while directly engaged in armed conflict. The
25 statutory authorization for the Purple Heart is set forth in 10 U.S.C. § 1129. The
26 Silver Star is the fourth highest military decoration that can be awarded to any
27 member of any branch of the United States Armed Forces. The statutory
28 authorization for the Silver Star is set forth in 10 U.S.C. § 3746, 6244, and 8746.

1 It is awarded for gallantry in action against an enemy of the United States. The
 2 Bronze Star is a United States Armed Forces individual military decoration which
 3 is awarded for bravery, acts of merit, or meritorious service. The Bronze Star was
 4 authorized by Executive Orders 9419 and 11046, dated February 3, 1944, and
 5 August 24, 1962.

6 7. Waiver of Inadmissibility of Statements:

7 The Defendant agrees that, if he withdraws his guilty pleas, he waives the
 8 inadmissibility of statements, if any, made in the course of plea discussions with
 9 the United States, pursuant to Fed. R. Crim. P. 11(f). The Defendant agrees
 10 further that any such inadmissible statements also include those statements made
 11 at the change of plea hearing to establish facts sufficient for the Court to accept his
 12 pleas of guilty. The Defendant agrees that this waiver permits the United States to
 13 introduce any such inadmissible statements in its case-in-chief.

14 8. The United States Agrees:

15 *To File No Additional Charges*

16 The United States Attorney's Office for the Eastern District of Washington
 17 agrees to bring no additional charges against the Defendant based on information
 18 in its possession at the time of this Plea Agreement and arising out of his conduct
 19 involving the illegal activity charged in the Information, unless the Defendant
 20 breaches this Plea Agreement any time before or after sentencing.

21 9. Effect of Breach:

22 The Defendant agrees that if he breaches this Plea Agreement: that the
 23 agreement is null and void; that he expressly waives the right to challenge the
 24 initiation of additional charges against him for any criminal activity; and that the
 25 United States may make derivative use of and may pursue any investigative leads
 26 suggested by him.

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10. United States Sentencing Guideline Calculations:

The United States and the Defendant acknowledge that the final Sentencing Guidelines calculations will be determined by the Court, with input from the United States Probation Office. The United States and the Defendant reserve the right to advise the Court and the United States Probation Office about the law and facts applicable to any sentencing issues.

Counts 1 and 2

1. *Base Offense Level:*

The Defendant and the United States agree that the base offense level for Use and Possession of a Forged or Altered Military Discharge Certificate, as charged in Count 1, and False Claims of Military Medals, as charged in Count 2, is 6. See USSG § 2B1.1(a)(2) and 2X5.2(a).

2. *Grouping Analysis:*

The Defendant and the United States agree that Counts 1 and 2 should be grouped together into a single Group when calculating the advisory Guidelines sentencing range. See USSG § 3D1.2.

3. *Acceptance of Responsibility:*

If the Defendant pleads guilty and demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct, provides complete and accurate information during the sentencing process, and does not commit any obstructive conduct, the United States will recommend a two-level reduction to his offense level for acceptance of responsibility. See USSG §§ 3E1.1(a).

The Defendant agrees to pay the \$25 mandatory special penalty assessment for each count to the Clerk of Court for the Eastern District of Washington, before sentencing, and shall provide a receipt from the Clerk to the United States Attorney's Office before sentencing as proof of this payment, as a condition to this recommendation by the United States. See 18 U.S.C. § 3013. If the Defendant

1 lacks the financial resources to pay the assessments at or before sentencing, he
 2 agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility
 3 Program in order to pay the assessments.

4 The Defendant and the United States agree that the United States may at its
 5 option and upon written notice to the Defendant, not recommend a reduction for
 6 acceptance of responsibility if, prior to the imposition of sentence, he is charged
 7 with or convicted of any criminal offense whatsoever and/or if he tests positive for
 8 any controlled substance.

9 Therefore, the Defendant and the United States agree that the Defendant's
 10 final adjusted offense level would be 4.

11 4. *Criminal History:*

12 The United States and the Defendant understand that his Criminal History
 13 computation will be determined by the Court, based on input from the United
 14 States Probation Office and the Presentence Investigation Report. The Defendant
 15 and the United States acknowledge that they have made no agreement and have
 16 made no representations as to the Criminal History Category within which the
 17 Defendant falls.

18 11. Incarceration:

19 The Defendant acknowledges that the United States will recommend that
 20 the Court impose a term of imprisonment within the applicable advisory
 21 Sentencing Guidelines range.

22 12. Conditions of Supervised Release:

23 The Defendant acknowledges and understands that the United States intends
 24 to recommend that the Court impose a one-year term of supervised release. The
 25 Defendant also acknowledges and understands that the United States intends to
 26 recommend that any term of supervised release include, in addition to the standard
 27 conditions of supervised release, the following special conditions:

28

- 1 (a.) that the Defendant complete all mental health evaluation and
2 treatment recommended by his designated Probation Officer,
3 including taking medications prescribed by any treatment provider,
4 allowing reciprocal release of information between the Probation
5 Officer and any treatment provider, and contributing to the cost of
6 treatment according to his financial ability, and
7 (b.) that the Defendant's person, residence, office, vehicle, and
8 belongings be subject to search at the direction of his designated
9 Probation Officer, and
10 (c.) that the Defendant make monthly restitution payments in accordance
11 with the plan established by the Court, and
12 (d.) that the Defendant disclose, upon request by his designated Probation
13 Officer, all records and information related to his financial condition.

14 13. Criminal Fine:

15 The United States and the Defendant are free to make whatever
16 recommendation concerning the imposition of a criminal fine that they believe is
17 appropriate.

18 14. Mandatory Special Penalty Assessment:

19 The Defendant agrees to pay the \$25 mandatory special penalty assessment
20 for each count to the Clerk of Court for the Eastern District of Washington, at or
21 before sentencing, pursuant to 18 U.S.C. § 3013, and shall provide a receipt from
22 the Clerk to the United States before sentencing as proof of this payment.

23 15. Inmate Financial Responsibility Program:

24 If the Defendant lacks the financial resources to pay the monetary
25 obligations imposed by the Court, the Defendant agrees to earn the money to pay
26 toward these obligations by participating in the Bureau of Prisons' Inmate
27 Financial Responsibility Program.

16. Restitution:

The Defendant and the United States hereby stipulate and agree that, pursuant to 18 U.S.C. §§ 3663, 3663A and 3664, the Court should order restitution, the amount of which shall be determined at the time of sentencing, be paid to the United States Department of Veterans Affairs. The Defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program while in custody and to make restitution payments pursuant to a monthly installment payment while on supervised release in accordance with a plan set by the Court.

17. Conditional Waiver of Appeal Rights:

The Defendant agrees to waive the right to appeal his sentence if: the Court imposes a term of imprisonment of no longer than six months; imposes a term of supervised release of no longer than one year; orders the Defendant to pay restitution in an amount not exceeding \$2,069.74; and orders the Defendant to pay an aggregate \$50 special penalty assessment.

18. Additional Violations of Law Can Void Plea Agreement:

The Defendant and the United States agree that the United States may at its option and upon written notice to the Defendant, withdraw from this Plea Agreement or modify its recommendation for sentence if, prior to the imposition of sentence, the Defendant is charged or convicted of any criminal offense whatsoever or if the Defendant tests positive for any controlled substance.

19. Integration Clause:

The United States and the Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and the Defendant, and no other promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state or local

1 authorities. The United States and the Defendant agree that this agreement cannot
 2 be modified except in a writing that is signed by the United States and the
 3 Defendant.

4 Approvals and Signatures

5 Agreed and submitted on behalf of the United States Attorney's Office for
 6 the Eastern District of Washington.

7 James A. McDevitt
 8 United States Attorney

9 
 10 
 11 George J.C. Jacobs, III
 12 Assistant U.S. Attorney

13 9/19/07
 14 Date

15 I have read this Plea Agreement and have carefully reviewed and discussed
 16 every part of the agreement with my attorney. I understand and voluntarily enter
 17 into this Plea Agreement. Furthermore, I have consulted with my attorney about
 18 my rights, I understand those rights, and I am satisfied with the representation of
 19 my attorney in this case. No other promises or inducements have been made to
 20 me, other than those contained in this Plea Agreement, and no one has threatened
 21 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead
 22 guilty because I am guilty.

23 
 24 Michael D. Heit
 25 Defendant

26 Sept 19, 2007
 27 Date

28 I have read the Plea Agreement and have discussed the contents of the
 agreement with my client. The Plea Agreement accurately and completely sets
 forth the entirety of the agreement between the parties. I concur in my client's

1 decision to plead guilty as set forth in the Plea Agreement. There is no legal
2 reason why the Court should not accept the Defendant's pleas of guilty.

3 Jaime Hawk
4 Jaime M. Hawk
5 Attorney for the Defendant

9/19/07
Date

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