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| SUPERIOR COURT OF CALIFORNIA COUNTY OF MERCED <input type="checkbox"/> Superior Courts Building 2260 N Street Merced, CA 95340 (209) 725-4100 | | <input type="checkbox"/> Los Banos Division 1159 G Street Los Banos, CA 93635 (209) 725-4124 | <i>Reserved for Clerk's File Stamp</i> |
| PEOPLE OF THE STATE OF CALIFORNIA, v. Defendant: | | | |
| MISDEMEANOR ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM <input type="checkbox"/> PROPOSITION 36 (Penal Code § 1210 et seq.) | | <input type="checkbox"/> PRETRIAL DIVERSION (Penal Code § 1000 et. seq.) | CASE NO. |
| INSTRUCTIONS | | | |
| <p>Prop 36: Fill out this form if you wish to plead guilty or no contest to the charges against you in order to be placed on probation pursuant to Penal Code section 1210 et seq. ("Proposition 36-The Substance Abuse and Crime Prevention Act of 2000"). If you successfully complete the requirements of your probationary sentence as directed by the Court, you may petition the sentencing Court to set aside the conviction and dismiss the charges. If you do not successfully complete these requirements, the Court will revoke your probation and sentence you according to the otherwise applicable law, which may include a period of incarceration.</p> <p>Diversion: Fill out this form if you wish to participate in the Penal Code section 1000 Pretrial Diversion Program. Your case will be delayed to give you an opportunity to attend and complete the PRETRIAL DIVERSION counseling program.</p> <p>Initial the box for each applicable item only if you understand it, and sign and date the form on page 3. If you have questions about your case, the possible sentence, or the information on this form, ask your attorney or the judge.</p> | | | |
| INITIALS | DECLARATIONS | | |
| | 1. | By placing my initials in the space to the left, I declare I fully understand each declaration and waiver. | |
| | 2. | I stipulate to a court commissioner acting as temporary judge until final determination of the cause. | |
| | 3. | I have been informed of the charge(s)/enhancement(s) against me, and each charge/enhancement was fully explained to me by my attorney or the judge, and I understand the nature and the possible consequences of the charge(s)/enhancement(s). | |
| | 4. | Right to an attorney: I understand that I have the right to be represented by an attorney throughout the proceedings. I understand that the Court will appoint a free attorney for me if I cannot afford to hire one, but at the end of the case, I may be asked to pay all or part of the cost of that attorney, if I can afford it. I understand that there are dangers and disadvantages to giving up my right to an attorney, and that it is almost always unwise to represent myself. | |
| | 5. | I have had enough time to discuss my case and all possible defenses with my attorney. My attorney has explained the elements of the charged offense(s), any enhancement(s) and/or allegation(s) against me. I have told my attorney all the facts that are known to me about my case and we have discussed my rights, waiver of those rights, and all possible consequences of this plea. | |
| | 6. | [Leave blank if you have an attorney] I am proceeding without an attorney though the Court has advised me of the dangers of doing so. | |
| | 7. | Right to a jury trial: I understand I have a constitutional right to a speedy trial by the court or jury open to the public. I must be tried within 30 days of my arraignment if I am in custody or within 45 days if I am not in custody. I understand that a jury is composed of twelve members of the community, that I may participate in the selection of jurors, and that the verdict of the jury must be unanimous. | |
| | 8. | Right to confront and cross-examine witnesses: I understand that I have the right to confront and cross-examine all witnesses testifying against me. | |
| | 9. | Right against self-incrimination: I understand that I have the right to remain silent and not incriminate myself, and the right to testify on my own behalf. I understand that by pleading guilty or no contest, or admitting prior conviction(s) or probation violation(s), I am incriminating myself. | |
| | 10. | Right to produce evidence: I understand that I have the constitutional right to have the Court use its power to subpoena witnesses and documents on my behalf and to present evidence, at no cost to me. | |
| | 11. | Parole/Probation: I understand that if I am now on parole, post-release community supervision, mandatory supervised release, or probation, my plea of guilty or no contest will constitute a violation of my probation. | |
| | 12. | Immigration: If you are not a citizen of the United States, you are hereby advised that a conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. I understand this. I have had sufficient time to discuss the potential immigration consequences of my plea with my attorney, and I am willingly, knowingly, and voluntarily choosing to enter my plea of guilty or no contest, rather than go to trial. | |
| | 13. | I understand that I have a right to wait a minimum of 6 hours, and up to 5 days, to be sentenced after entering my plea. However, I understand the Court may extend this time if it orders a pre-sentencing probation report. | |
| | 14. | I understand that a plea of no contest has the same effect as a plea of guilty in this proceeding, but may not be used against me in a civil action out of this incident. | |
| INITIALS | PARTICIPATION IN PROBATION UNDER PROPOSITION 36 | | |
| | 15. | I understand the word "waive" means that I give up the rights I have. | |
| | 16. | [Leave blank if you have an attorney] I hereby waive my right to have an attorney represent me. | |
| | 17. | I hereby waive my right to a jury trial and my right to a court trial. | |
| | 18. | I hereby waive my right to confront and cross-examine any witnesses against me. | |

| INITIALS | PARTICIPATION IN PROBATION UNDER PROPOSITION 36 (continued) | |
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| | 19. | I hereby waive my right to have witnesses and documents subpoenaed on my behalf and my right to present evidence. |
| | 20. | I hereby waive my right to remain silent and to not incriminate myself. |
| | 21. | I hereby waive time for sentencing so the Court may sentence me now. |
| | 22. | I understand that conditions of my probation will require me to successfully complete a drug treatment program for a period of up to one year, as determined by the Court based upon the severity of my addiction and my criminal history. The treatment program may consist of outpatient treatment, in-patient residential treatment, narcotic replacement therapy, drug education or prevention courses, or a combination thereof. If necessary for successful completion, the court may order up to two six-month extensions. |
| | 23. | I understand that I may also be required as a further condition of probation to complete community service hours and supplemental drug treatment services, including but not limited to vocational training, family counseling and literacy training. The Court may also require me to participate in additional aftercare services for up to six months following completion of my drug treatment program. |
| | 24. | I understand that I may be required to undergo testing for the presence of drugs or alcohol, as directed by the Court. |
| | 25. | I understand that if I successfully complete all of the conditions of my probation, I may petition the sentencing court to set aside the conviction and dismiss the charges. If the Court finds that I have completed all aspects of my drug treatment program, including aftercare and supplemental services and finds that there is reasonable cause to believe that I will not abuse controlled substances in the future, then the conviction will be set aside and the charges dismissed. |
| | 26. | I understand that if the charges are dismissed as indicated above, I must still: (1) disclose my arrest and conviction upon any application for a position as a peace officer, for public office, or for a license by a state or local agency; and (2) disclose the arrest and conviction when contracting with the California State Lottery and for purposes of serving on a jury. |
| | 27. | I understand that if I commit another offense during the pendency of this drug program, I may be dismissed from the program and proceed directly to sentencing. |
| | 28. | FUTURE NON-DRUG-RELATED OFFENSE OR VIOLATION OF CONDITION OF PROBATION I understand that the Court may revoke my grant of probation if I am arrested for any non-drug-related offense or violate any non-drug-related condition of probation, and that I may thereafter be sentenced pursuant to otherwise applicable law |
| | 29. | FUTURE DRUG-RELATED OFFENSE OR VIOLATION OF CONDITION OF PROBATION I understand that on a: (1) FIRST violation of probation based on drug-related behavior, the Court shall revoke my probation if the alleged violation is proved and I am found to pose a danger to the safety of others. (2) SECOND such violation, the Court shall revoke my probation if the drug-related violation is proved and I am found to pose a danger to others or am unamenable to drug treatment. Note – under a and b above, if the Court does not revoke probation, my required drug treatment may be intensified. (3) THIRD such violation, my probation will be revoked if the violation is proved, and I will be sentenced under the otherwise applicable law. |
| | 30. | I understand that the court may revoke my probation at any time if the court finds I am unamenable to treatment. |
| | 31. | I am freely and voluntarily entering a plea. No one has threatened me or anyone close to me to make this plea. No one has made any other promises to me, such as a lighter sentence, reward, immunity or anything not discussed in this form. |
| | 32. | I am not under the influence of any drugs, alcohol, or medication. |
| | 33. | I freely and voluntarily plead guilty or no contest to: _____ |
| | 34. | I admit my prior conviction(s): |
| | 35. | I understand the charge(s) carry a maximum of _____ in county jail. |
| | 36. | I understand that in addition to the fine imposed, the law requires the Court to add assessments which will increase the amount I must pay. I understand that I may also be ordered: (1) to make restitution to the victim, if the offense involved a victim, or to a Restitution Fund and/or battered women's shelter; and (2) to pay the expenses incurred by a public agency which responded to any incident caused by my vehicle at the time of my arrest. |
| | 37. | Factual Basis: I admit the facts as stated in the police report constitute a factual basis for my plea. |
| | 38. | Arbuckle Waiver: I understand that I have the right to be sentenced by the same judge or court commissioner who takes my plea. I give up that right and agree that any judge or court commissioner may sentence me. |
| | 39. | Harvey Waiver: The sentencing judge or court commissioner may consider the entire factual background of the case, including any dismissed or stricken charges or allegations or cases, and any charges the District Attorney agrees not to file, when granting probation, ordering restitution or imposing sentence. |
| | 40. | I understand the word "waive" means that I give up the rights I have. |
| | 41. | [Leave blank if you have an attorney] I hereby waive my right to have an attorney represent me. |

| INITIALS | PARTICIPATION IN PRETRIAL DIVERSION | |
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| | 43. | I hereby waive my right to a jury trial. |
| | 44. | I hereby waive my right to a preliminary hearing, if applicable. |
| | 45. | I hereby waive my right to a speedy trial. |
| | 46. | I am requesting to participate in the Penal Code section 1000 Pretrial Diversion Program. I understand that I will be required to plead Not Guilty to my charges, enter a general time waiver, and waive my right to a jury trial. I understand that the program will require a commitment of time, effort and money on my part. |
| | 47. | I understand that if I successfully complete the program I will not be sentenced. Instead, I will be permitted to return to court, no sooner than 12 and no later than 18 months, after my plea and my case will be dismissed. My arrest will be deemed to have never occurred and it shall not be used against me in any way that could result in the denial of any employment, benefit, license or certificate (unless I apply for a position as a peace officer). |
| | 48. | If I fail to complete the program, or if I am convicted of a new crime, I will be sentenced on this case. |
| | 49. | I am freely and voluntarily entering a plea. No one has threatened me or anyone close to me to make this plea. No one has made any other promises to me, such as a lighter sentence, reward, immunity or anything not discussed in this form. |
| | 50. | I am not under the influence of any drugs, alcohol, or medication. |
| | 51. | I freely and voluntarily plead not guilty to: _____ |
| | 52. | I understand the charge(s) carry a maximum of _____ in county jail. |
| | 53. | I understand that in addition to the fine imposed, the law requires the Court to add assessments which will increase the amount I must pay. I understand that I may also be ordered: (1) to make restitution to the victim, if the offense involved a victim, or to a Restitution Fund and/or battered women's shelter; and (2) to pay the expenses incurred by a public agency which responded to any incident caused by my vehicle at the time of my arrest. |

DEFENDANT'S STATEMENT

I have read or have had this form read to me. I understood all items above and personally initialed each item that applies to my case. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Date _____
Defendant's Signature

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained to the defendant each of his/her rights and answered all of the defendant's questions with regard to this plea. I have discussed the facts of the case with the defendant, and explained the consequences of this plea, including the immigration consequences, the elements of the offense(s), and the possible defense(s). I concur with this plea and the defendant's decision to waive his/her constitutional right, and stipulate to a factual basis.

Date _____
Attorney's Signature

INTERPRETER'S STATEMENT (if applicable)

I, _____, having been duly sworn or having a written oath on file, certify that I truly interpreted this form to the defendant in the _____ language. The defendant stated that he/she understood the contents in the form and then he/she initialed and signed the form.

Date _____
Interpreter's Signature #

PROSECUTING ATTORNEY'S STATEMENT

I stipulate there is a factual basis for this plea. I have reviewed this plea form and do not believe any further statement of consequences or advisement of rights are necessary. If applicable, I stipulate to a court commissioner acting as temporary judge until final determination of the cause.

Date _____
Attorney's Signature

COURT'S FINDINGS AND ORDER

The Court, having reviewed this form and having questioned the defendant, finds that (a) the defendant has read or has had this form read to him/her and understands each of the initialed terms on this form; (b) the defendant understands the nature of the crimes and allegations listed and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives his/her constitutional and statutory rights; and (d) the defendant's plea, and waiver of rights are made freely and voluntarily.

PROPOSITION 36 Participants only:

The Court further finds that the defendant's admissions are made freely and voluntarily and there is a factual basis for the plea.

The Court accepts the defendant's plea, admissions, and waiver of rights and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the Court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this Court.

Date

Signature of the Court