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FEB 23 2009	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

1 DIANE J. HUMETEWA  
United States Attorney  
District of Arizona

2 STEPHEN W. LARAMORE  
3 Assistant U.S. Attorney  
Two Renaissance Square  
4 40 N. Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408  
5 Arizona State Bar No. 11903  
Telephone (602) 514-7500

6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8 United States of America,  
9  
10 Plaintiff,

11 v.

12 Brian Ongaro,  
13 Defendant.

CR-07-0260-07-PHX-DGC

AMENDED PLEA AGREEMENT

Cooperation/Testimony Required

14 Plaintiff, United States of America, and defendant, Brian Ongaro, hereby agree to the  
15 following disposition of this matter:

16 PLEA

17 Defendant will plead guilty to Count 1 of the Indictment charging defendant with a  
18 violation of Title 18, United States Code, Section 1341, Mail Fraud, a Class C felony offense.

19  
20 TERMS

21 Defendant understands that the Court is required to consider the United States Sentencing  
22 Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining  
23 defendant's sentence. Defendant understands, however, that the Sentencing Guidelines are only  
24 advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise  
25 its discretion to impose any reasonable sentence up to the maximum set by statute for the crimes  
26 of conviction.

27  
28

1 **Maximum Penalties**

2 a. A violation of Title 18, United States Code, Section 1341, is punishable by a  
3 maximum fine of \$250,000, a maximum term of imprisonment of 5 years, or both and a term of  
4 supervised release of 5 years.

5 b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform  
6 Act of 1984, the court shall:

7 (1) Order the defendant to make restitution to any victim of the offense unless,  
8 pursuant to Title 18, United States Code, Section 3663, the court determines that restitution  
9 would not be appropriate in this case;

10 (2) Order the defendant to pay a fine, which may include the costs of probation,  
11 supervised release or incarceration, unless, pursuant to Title 18, United States Code, Section  
12 3572, the Court finds upon consideration of the factors therein and in Section 3553 that a fine  
13 is not appropriate;

14 (3) Order the defendant, pursuant to Title 18, United States Code, Section 3583,  
15 to serve a term of supervised release when required by statute or when a sentence of  
16 imprisonment of more than one year is imposed, and the court may impose a term of supervised  
17 release in all other cases.

18 c. Pursuant to Title 18, United States Code, Section 3013, the court is required to  
19 impose a special assessment on the defendant of \$100.00. The special assessment is due at the  
20 time the defendant enters the plea of guilty, but in no event shall it be paid later than the time of  
21 sentencing.

22  
23 **2. Cooperation Required**

24 The defendant will cooperate with the United States on the following terms and  
25 conditions.

26 a. Defendant will waive the Fifth Amendment privilege against self-incrimination  
27 and will provide information in an interview and testify completely and truthfully at any time  
28

1 and any place requested by the United States, including at any state or federal grand jury  
2 proceeding, forfeiture proceeding, bond hearing, pretrial hearing, civil and criminal trial, retrial  
3 or post-trial hearing regarding his role and the role of the others in the offenses charged in the  
4 Indictment under this cause number. Defendant shall answer all questions on cross-examination  
5 and redirect examination truthfully and completely, asked by any party, regarding the above-  
6 named persons, and all other persons.

7       b. All such information and testimony shall be truthful, honest, candid, and complete  
8 with no knowing material false statements or omissions. Such information and testimony shall  
9 include all criminal activity known to the defendant.

10       c. Defendant will be available for interviews by attorneys and law enforcement  
11 officers from the government upon request and reasonable notice.

12       d. Defendant will provide the United States with all documents, records, memoranda  
13 and the like, at the request of the United States, within the defendant's custody and control or to  
14 which the defendant has access which are related to the subject matter of the investigation or  
15 case.

16       e. Defendant will neither attempt to protect any person or entity through false  
17 information or omissions nor falsely implicate any person or entity.

18       f. In the event the defendant or the defendant's family is harassed, threatened or  
19 otherwise subjected to intimidation because of defendant's cooperation, the United States shall  
20 in its complete discretion, take appropriate action to protect defendant and the defendant's  
21 family.

22       g. Nothing in this agreement requires the United States to accept any cooperation or  
23 assistance the defendant may choose to proffer. The decision whether and how to use any  
24 information and/or cooperation that defendant provides is in the exclusive reasonable discretion  
25 of this office.

26       h. Defendant will not violate any local, state, federal or foreign laws.  
27  
28

1 i. Defendant Not in Custody The defendant shall comply with all terms and  
2 conditions of his release.

3 j. The defendant will also provide all information concerning all forfeitable assets.

4 k. Defendant shall not knowingly contact any person who has been criminally  
5 charged in any forum, except any family members of the defendant regarding innocent family  
6 matters.

7 l. Self-incriminating information provided by the defendant during cooperation  
8 involving criminal activity for which the defendant has not been or will not be charged pursuant  
9 to this agreement will not be used against the defendant and in particular will not be used in  
10 determining defendant's advisory guideline range pursuant to Section 1B1.8 of the Sentencing  
11 Guidelines.

12 m. Nothing shall limit the United States' methods of verifying the truthfulness of  
13 defendant's statements. The United States may confirm the accuracy of any information which  
14 defendant provides under the terms of this agreement by use of any investigative means which  
15 it deems appropriate and necessary. Whether there has been a complete, truthful and candid  
16 disclosure by the defendant will be evaluated and decided by the United States Attorney for the  
17 District of Arizona and by him alone.

18 n. The plea of guilty shall be entered **as soon as practicable**.

19 o. The sentencing on the guilty plea will be deferred, with consent of the court, for  
20 a period of six months, and, after such six-month period, upon recommendation of the United  
21 States and agreement by this court, may be deferred for additional periods. It is the intention of  
22 the parties that sentencing on the instant charges be postponed until such time as defendant's  
23 cooperation has been completed.

24  
25 **3. Agreements Regarding Sentencing**

26 Stipulated Sentence At the conclusion of defendant's cooperation, pursuant to this  
27 agreement, the United States will, at the time of sentencing, move pursuant to Title 18, United  
28

1 States Code, Section 3553(e), Title 28, United States Code, Section 994(n) that the court depart  
2 from the Guidelines and impose a sentence below a level established by law as the minimum  
3 sentence to reflect defendant's substantial assistance in the investigation and prosecution.  
4 Pursuant to Fed. R. Crim. P. 11(c)(1)(C) the United States and the defendant stipulate that the  
5 following is the appropriate departure:

6 That Sec. 2B1.1 of the Sentencing Guidelines is applicable for purposes of determining  
7 defendant's offense level;

8 That the loss amount for purposes of calculating defendant's offense level under Section  
9 2B1.1 is \$392,500 (the amount the defendant was unjustly enriched for his role in the mail fraud);

10 That the court may impose any sentence not to exceed the minimum sentence computed  
11 under the applicable guidelines based on said loss of \$392,500, including home detention and/or  
12 probation;

13 That the defendant reserves the right to argue for a lesser offense level and sentence  
14 within this stipulated range, including home detention and/or probation;

15 That the United States recommends that the Court depart downward pursuant to Sec.  
16 5K1.1 of the Sentencing Guidelines enough levels that defendant receive a sentence of home  
17 detention in lieu of prison.

18 If the court, after reviewing the plea agreement, concludes that any provision is  
19 inappropriate, it may reject the plea agreement giving the defendant, in accordance with  
20 Fed. R. Crim. P. 11(c)(5), an opportunity to withdraw the guilty plea.

21 The United States will bring the nature and extent of defendant's cooperation to the  
22 attention of the court, and the Bureau of Prisons, if applicable, at sentencing and any other  
23 appropriate time. The United States retains the unrestricted right to make any and all statements  
24 it deems appropriate to the Probation Office and to make factual and legal responses to any  
25 statements made by the defendant or defense counsel or objections to the presentence report or  
26 to questions by the court at the time of sentencing.

1        Acceptance of Responsibility Assuming the defendant makes full and complete disclo-  
 2 sure to the Probation Department of the circumstances surrounding the defendant's commission  
 3 of the offense and, if the defendant demonstrates an acceptance of responsibility for this offense  
 4 up to and including the time of sentencing, the United States will stipulate to a three-point  
 5 reduction as set forth in the advisory sentence guideline offense level, pursuant to Section 3E1.1  
 6 of the Guidelines, and in the event defendant does not qualify for a three-point reduction under  
 7 the Guidelines, the United States will stipulate to a two-point reduction pursuant to Section  
 8 3E1.1.

9        Criminal History Options This plea agreement is expressly conditioned upon the  
 10 accuracy of the defendant's criminal history as known by the government at the time of the plea.  
 11 The discovery of any criminal history in addition to that known shall entitle the government to  
 12 withdraw from this agreement.

13  
 14 **4.    Breach of the Agreement**

15        If the defendant fails to comply with any obligation or promise pursuant to this  
 16 agreement, the United States:

17            (1)    may, in its sole discretion, declare any provision of this agreement null and  
 18 void in accordance with paragraph (6) below and the defendant understands that the defendant  
 19 will not be permitted to withdraw the plea of guilty made in connection with this agreement;

20            (2)    may prosecute the defendant for any offense known to the United States for  
 21 which the defendant is responsible, and defendant waives any statute of limitations, Speedy Trial  
 22 Act, and constitutional restrictions for bringing charges after the execution of this agreement;

23            (3)    may argue for a maximum statutory sentence for the offenses to which  
 24 defendant has pled guilty;

25            (4)    may use in any prosecution any information, statements, documents, and  
 26 evidence provided by defendant both before and after the plea agreement including derivative  
 27 evidence;

1 (5) may advise the Bureau of Prisons that defendant is no longer a cooperating  
2 witness, and recommend redesignation of defendant to a higher custodial level.

3 (6) If there is a dispute regarding the obligations of the parties under this  
4 agreement, the United States District Court shall determine whether the United States or the  
5 defendant has failed to comply with this agreement including whether the defendant has been  
6 truthful.

7  
8 **5. Agreement to Make Restitution**

9 Defendant specifically agrees to make restitution to in an amount to be determined at  
10 sentencing.

11  
12 **6. Agreement to Dismiss or Not to Prosecute**

13 Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States will dismiss all remaining counts in  
14 the Indictment pertaining to the defendant.

15 a. This office will not prosecute the defendant for any offenses committed by the  
16 defendant, and known by the government, in connection with his role in this offense.

17 b. This agreement does not, in any manner, restrict the actions of the United States  
18 in any other district nor bind any other United States Attorney's Office.

19 c. The United States is not presently aware of any federal/state investigations or  
20 charges.

21  
22 **7. Waiver of Defenses and Appeal Rights**

23 The defendant waives any and all motions, defenses, probable cause determinations, and  
24 objections which the defendant could assert to the indictment or information or to the Court's  
25 entry of judgment against the defendant and imposition of sentence upon the defendant,  
26 providing the sentence is consistent with this agreement. The defendant further waives: (1) any  
27 right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the  
28

1 imposition of sentence upon defendant under Title 18, United States Code, Section 3742  
2 (sentence appeals); and (3) any right to collaterally attack defendant's conviction and sentence  
3 under Title 28, United States Code, Section 2255, or any other collateral attack. The defendant  
4 acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the  
5 defendant might file challenging his conviction or sentence in this case.

6  
7 **8. Perjury and Other False Statement Offenses or Other Offenses**

8 Nothing in this agreement shall be construed to protect the defendant in any way from  
9 prosecution for perjury, false declaration or false statement, or any other offense committed by  
10 defendant after the date of this agreement. Any information, statements, documents, and  
11 evidence which defendant provides to the United States pursuant to this agreement may be used  
12 against the defendant in all such prosecutions.

13  
14 **9. Reinstitution of Prosecution**

15 If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the  
16 United States will be free to prosecute the defendant for all charges of which it has knowledge,  
17 and any charges that have been dismissed because of this plea agreement will be automatically  
18 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the  
19 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later  
20 charges or proceedings. The defendant understands that any statements made at the time of the  
21 defendant's change of plea or sentencing may be used against the defendant in any subsequent  
22 hearing, trial, or proceeding as permitted by Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

23  
24 **10. Disclosure of Information to U.S. Probation Office**

25 The defendant will cooperate fully with the United States Probation Office. Such  
26 cooperation will include truthful statements in response to any questions posed by the Probation  
27 Department including, but not limited to:



1           (1) All criminal history information, i.e., all criminal convictions as defined  
2 under the Sentencing Guidelines.

3           (2) All financial information, e.g., present financial assets or liabilities that  
4 relate to the ability of the defendant to pay a fine or restitution.

5           (3) All history of drug abuse which would warrant a treatment condition  
6 as part of sentencing.

7           (4) All history of mental illness or conditions which would warrant a  
8 treatment condition as a part of sentencing.]

9  
10 **11. Forfeiture, Civil, and Administrative Proceedings**

11           a. Nothing in this agreement shall be construed to protect the defendant from civil  
12 forfeiture proceedings or prohibit the United States from proceeding with and/or initiating an  
13 action for civil forfeiture.

14           b. Defendant will identify all assets and identify the source of income used to obtain  
15 the assets. Defendant will identify all assets used to facilitate the commission of any crime  
16 charged in this indictment. Defendant will testify truthfully in any civil forfeiture proceeding.

17           c. Further, this agreement does not preclude the United States from instituting any  
18 civil or administrative proceedings as may be appropriate now or in the future.

19  
20 **FACTUAL BASIS**

21           I further admit that if this matter were to proceed to trial the United States could prove  
22 the following facts beyond a reasonable doubt:

23 **A. ELEMENTS OF TITLE 18 U.S.C. § 1341 - (Count 7)**

24           First, the defendant knowingly devised or participated in a scheme or plan  
25 for obtaining money or property by making false promises or statements;

26           Second, the defendant knew that the promises or statements were false;

27           Third, the promises or statements were material, that is they would  
28 reasonably influence a person to part with money or property;

            Fourth, the defendant acted with the intent to defraud; and

1 Fifth, the defendant used or caused to be used the mails or other interstate  
2 commercial carrier to carry out and attempt to carry out an essential part of this  
3 scheme.

4 A mailing is caused when one knows that the mails will be used in the  
5 ordinary course of business or when one can reasonably foresee such use. It does  
6 not matter whether the material mailed was itself false or deceptive so long as the  
7 mail was used as part of the scheme, nor does it matter whether the scheme or plan  
8 was successful or that any money or property was obtained.

#### 9 **AUTHORITY:**

10 Title 18, United States Code, Section 1341; Ninth Circuit Model Criminal Jury  
11 Instructions (2003), 8.101 as modified. United States v. Stapleton, 293 F.3d 1111,  
12 1115-1118 (9<sup>th</sup> Cir. 2002) (A knowing participant in a scheme to defraud is liable  
13 for the substantive acts of his co-schemers.)

#### 14 **Intent to Defraud**

15 An intent to defraud is an intent to deceive or cheat.

16 Model Jury Criminal Instructions, (2003) 3.17

#### 17 **FACTS**

18 On or about January 23, 2001, defendants **BRIAN ONGARO** and his partner  
19 **RAYMOND MARSHALL** entered into an agreement with CORF Licensing Services, LP  
20 (hereafter "CLS") to establish two CORFs (Comprehensive Outpatient Rehabilitation Facility),  
21 one located in Lewisville, Texas and the other, Richardson, Texas, also known as "Texas  
22 Therapy Centers," and "RMBO Enterprises, Ltd" (hereafter "RMBO"). Pursuant to the the  
23 terms of the contract **ONGARO** and **MARSHALL** paid CLS \$187,500.

24 Co-defendants **DAVID GOLDFARB**, **RICHARD ROSS**, **PAUL WOODCOCK** and  
25 **MILTON GUENTHER** were the principals of CLS.

26 CORF Management Services, LP ("CMS") handled RMBO's billings. CMS was owned  
27 and operated by the aforementioned co-defendants and principals of CLS. RMBO provided CMS  
28 its patient visits and types of therapy so CMS could bill Medicare or other insurance carriers.

Both the Lewisville and Richardson facilities were certified in September 2001 and open  
for business. Before becoming certified, **ONGARO** and **MARSHALL** at the request of  
**GOLDFARB** agreed to talk to prospects and assure them that CLS delivered on the promises

1 it made at the seminars and elsewhere. GOLDFARB would call **ONGARO** and/or  
2 **MARSHALL** and provide a phone number for the prospect so they could call him. Several of  
3 the prospects actually visited RMBO's clinics and met with them in person. **ONGARO** and/or  
4 **MARSHALL** would then typically confirm these visits and contacts with GOLDFARB and/or  
5 his assistant Jay Taylor and share with him their assessment of the prospects readiness to close  
6 so GOLDFARB could follow up with the prospects.

7 Initially, **ONGARO** and **MARSHALL** volunteered to talk to the prospects because it  
8 afforded them a chance to network and share ideas with others starting up a CORF. Within a  
9 couple of months, this process became burdensome and very time consuming because  
10 GOLDFARB referred more and more prospects to RMBO. GOLDFARB offered to pay  
11 **ONGARO** and **MARSHALL** for the time spent with the prospects, and they accepted. In June  
12 2001, CLS paid RMBO \$7,500. This arrangement continued through January 2003 with RMBO  
13 receiving monthly payments, some as large as \$60,000. In total, CLS paid RMBO  
14 approximately \$700,000 for its efforts to market CLS which **ONGARO** and **MARSHALL**  
15 plowed back into RMBO to cover its monthly expenses.

16 Once RMBO's facilities were certified, it soon became apparent to **ONGARO** and  
17 **MARSHALL** that there were insufficient patient referrals and activity to meet expenses.  
18 **ONGARO** and **MARSAHALL**'s concerns about the lack of patient activity were communicated  
19 to GOLDFARB, ROSS, WOODCOCK and GUENTHER, but mostly GOLDFARB, in various  
20 e-mails and letters beginning as early as November 2001 and continuing through 2003 and  
21 confirmed by the CMS billing records. Notwithstanding the payments from CLS, RMBO lost  
22 money in 2001 through 2003.

23 In order to keep the funds from CLS flowing, **ONGARO** intentionally misrepresented  
24 the success of his operations to prospect-victims. For example, **ONGARO** intentionally omitted  
25 to tell any of the prospects that RMBO was not meeting patient count projections, that RMBO  
26 was not meeting profitability projections, that RMBO was losing money, that he was being paid  
27 a substantial sum by CLS to tout it, and that he used money received from CLS to keep RMBO  
28

1 afloat. ONGARO knew that such information would discourage prospects from signing a  
2 contract with CLS.

3 As aforementioned, the defendant- principals of CLS knew RMBO was losing money  
4 yet paid **ONGARO** and MARSHALL over \$700,000 to sell CLS to prospects.

5 **COUNT 1**

6 In or about May 2002, during a conversation with Carl Betcher, a potential CORF owner,  
7 **ONGARO** intentionally failed to disclose that RMBO was not reaching patient count  
8 projections or profitability projections promised by CLS, intending to convey the false  
9 impression that RMBO was profitable and successful. **ONGARO** intentionally failed to disclose  
10 that RMBO was losing money and that he and his partner were being paid a substantial sum to  
11 tout CLS. **ONGARO** knowingly made these false misrepresentations with the intention of  
12 deceiving Carl Betcher in order to induce him to sign a Licensing Service Agreement with CLS  
13 and pay CLS a fee so that CLS would continue to pay him.

14 On or about May 22, 2002, Carl Betcher received from CLS a letter with a Licensing  
15 Service Agreement and Support Service Agreement enclosed along with a request for payment  
16 via-fed ex. On or about this day, returned the signed contracts to CLS and a check payable to it  
17 for \$165,000.

18 **ONGARO** could reasonably foresee that CLS would use the mail in the ordinary course  
19 of its business.

20 All in violation of Title 18, United States Code, Section 1341.

21 I understand that I will have to swear under oath to the accuracy of this statement, and  
22 if I should be called upon to testify about this matter in the future, any intentional material  
23 inconsistencies in my testimony may subject me to additional penalties of perjury or false  
24 swearing which may be enforced by the United States under this agreement.

25 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

26 I have read each of the provisions of the entire plea agreement with the assistance of  
27 counsel and understand its provisions.

1 I have discussed the case and my constitutional and other rights with my attorney. I  
2 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty,  
3 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present  
4 evidence in my defense, to remain silent and refuse to be a witness against myself by asserting  
5 my privilege against self-incrimination -- all with the assistance of counsel -- and to be presumed  
6 innocent until proven guilty beyond a reasonable doubt.

7 I agree to enter my guilty plea as indicated above on the terms and conditions set forth  
8 in this agreement.

9 I have been advised by my attorney of the nature of the charges to which I am entering  
10 my guilty plea. I have further been advised by my attorney of the nature and range of the  
11 possible sentence and that my ultimate sentence will be determined after consideration of the  
12 advisory Sentencing Guidelines. I understand that the Guideline Range referred to herein or  
13 discussed with my attorney is not binding on the court and is merely an estimate.

14 My guilty plea is not the result of force, threats, assurances or promises other than the  
15 promises contained in this agreement. I agree to the provisions of this agreement as a voluntary  
16 act on my part and I agree to be bound according to its provisions.

17 I fully understand that, if I am granted probation or placed on supervised release by the  
18 court, the terms and conditions of such probation/supervised release are subject to modification  
19 at any time. I further understand that, if I violate any of the conditions of my  
20 probation/supervised release, my probation/supervised release may be revoked and upon such  
21 revocation, notwithstanding any other provision of this agreement, I may be required to serve  
22 a term of imprisonment or my sentence may otherwise be altered.

23 I agree that this written plea agreement contains all the terms and conditions of my plea  
24 and that promises made by anyone (including my attorney), and specifically any predictions as  
25 to the guideline range applicable, that are not contained within this written plea agreement are  
26 without force and effect and are null and void.

27 I am satisfied that my defense attorney has represented me in a competent manner.  
28

1 I am fully capable of understanding the terms and conditions of this plea agreement. I  
2 am not now on or under the influence of any drug, medication, liquor, or other intoxicant or  
3 depressant, which would impair my ability to fully understand the terms and conditions of this  
4 plea agreement.


5 2/2/09  
6 Date

  
7 BRIAN ONGARO  
8 Defendant

9 **DEFENSE ATTORNEY'S APPROVAL**

10 I have discussed this case and the plea agreement with my client, in detail and have  
11 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional  
12 and other rights of an accused, the factual basis for and the nature of the offense to which the  
13 guilty plea will be entered, possible defenses, and the consequences of the guilty plea including  
14 the maximum statutory sentence possible. I have further discussed the concept of the advisory  
15 sentencing guidelines with the defendant. No assurances, promises, or representations have been  
16 given to me or to the defendant by the United States or by any of its representatives which are  
17 not contained in this written agreement. I concur in the entry of the plea as indicated above and  
18 on the terms and conditions set forth in this agreement as in the best interests of my client. I  
19 agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all  
20 the requirements of Fed. R. Crim. P. 11.

21 2/17/09  
22 Date

  
23 ZACHARY CAIN and/or EDWARD NOVAK  
24 Attorney for Defendant  
25  
26  
27  
28

**UNITED STATES' APPROVAL**

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

DIANE J. HUMETEWA  
United States Attorney  
District of Arizona

2/23/09  
Date

Stephen W. Laramore  
STEPHEN W. LARAMORE  
Assistant U.S. Attorney

**COURT'S ACCEPTANCE**

2/25/09  
Date

David G. Campbell  
HONORABLE DAVID G. CAMPBELL  
United States District Judge