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7  
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**  
9 **STOCKTON BRANCH**

10  
11 THE PEOPLE OF THE STATE OF CALIFORNIA, )  
12 )  
13 Plaintiff, ) No. CR-FE-2017-2704  
14 v. ) CR-FE-2018-15125  
15 ) STATEMENT OF PLEA  
16 ANTHONY RAY SILVA, ) NEGOTIATION  
17 ) Date: May 20, 2019  
18 ) Time: 9:00 AM  
19 Defendant. ) Dept.: 8D  
20 )

21 Pursuant to plea negotiations, Defendant has agreed to enter a plea to Count  
22 Six, to wit: Penal Code Section

23 STATEMENT OF THE CASE

24 On February 27<sup>th</sup>, 2017, Defendant was charged by way of indictment in case  
25 STK-CR-FE-2017-2704, to wit:

- 26  
27 Count 1: Section 424(a)(1)  
Count 2: Section 504  
28 Count 3: Section 487(a)  
Count 4: 186.10(c)(1)(A)

1 Count 5: Section 424(a)(3)

2 Count 6: 487(a)

3 One December 15<sup>th</sup>, 2017, a trial date was set for April 17, 2018.

4 At the March 26<sup>th</sup> readiness conference, an in-chambers conference was held  
5 among counsels for defense and the prosecution. After the conference, the defense  
6 requested that the trial date of April 17<sup>th</sup>, 2018 be vacated. The People, conceding  
7 good cause, voiced no opposition.

8 Subsequently, a new jury trial date was picked for November 6, 2018. In the  
9 interim, a new and separate complaint was filed on September 4<sup>th</sup> against Defendant  
10 (STK-CR-FECOD-2018-0011200).

11 Later, on October 16, the November trial date was vacated due to the parties'  
12 scheduling conflicts and the court's obligation in a time-not-waived special  
13 circumstances murder trial.

14 On December 17, an indictment was returned against Defendant (STK-CR-  
15 FECOD-2018-0015125) that superseded the previous above-mentioned complaint.  
16 (STK-CR-FECOD-2018-0011200). Those charges are:

17 Count 1: Section 487(A)

18 Count 2: Section 186.10

19 Count 3: Section 424(a)(1)

20 Count 4: Section 487(A)

21 Count 5: Section 424(a)(1)

22 Count 6: Section 1090

23 Count 7: Section 30305(a)(1)

24 Count 8: Section 29825(a)

25 Subsequently, the parties entered into negotiations. In mid-2018, the People  
26 tendered an offer to Defendant. Defendant has recently submitted a counter-offer  
27 detailed below.

### 28 STATEMENT OF PLEA

Defendant Anthony Silva has agreed to enter a guilty plea to Count Six in  
Indictment 2018-0015125 – Government Code section 1090, a felony. Defendant  
would agree to a Harvey waiver (*People v. Harvey* (1979) 25 Cal.3d 754) to Count One

1 – Penal Code section 487(a) in Indictment 2018-0015125. Pursuant to the Harvey  
2 Waiver in Count One, the Defendant would be jointly and severally liable for the  
3 reimbursement of *cy pres* funds to the Zelle Law Firm in the amount of \$19, 783.69.  
4 Defendant would be subject to a ‘top’ of six months in county jail. (Assembly Bill 109  
5 - Criminal justice alignment.) In addition, defendant would be subject to the  
6 standard condition of probation.

7 In exchange, the People would dismiss the remaining counts and the counts in  
8 Indictment 2017-2704.

9 This agreement was reached after consideration of all facts and circumstances  
10 surrounding this case, including, post-indictment document review pursuant to  
11 search warrants and reciprocal discovery.

12 Indictment 2017-2704

13 The People move the court to dismiss the following counts in the furtherance of  
14 justice. Specifically,

15 **Count 1:** Section 424(a)(1): Count One is based on the defendant’s application for  
16 funds from the National Boys and Girls Club. The source of these funds is grant from  
17 the U.S. Department of Justice. Defendant acting as the representative of the  
18 Stockton Boys and Girls Club was entitled to these funds.

19 The People position, however, is Defendant was entitled to these funds only  
20 upon condition he was not receiving funds for the same purpose from another source.  
21 Witnesses testified that he was receiving funds from another source. This “double-  
22 dipping” is the basis for the charge.

23 In subsequent talks with defense counsel and the receipt of reciprocal  
24 discovery, the People acknowledge that the Defendant may have a colorable claim to  
25 the money and a legitimate defense based on the language of the primary grant and  
26 the purpose of the funds.

27 **Count 2:** Section 504: Count Two is based on Defendant’s position of the Club’s  
28 president and is a “reasonably related” charge to Count Three.

1 **Count 3:** Section 487(a): Count Three is based on a series of checks, all over the  
2 amount of \$500, that were from the Club's checking account made out to Defendant,  
3 and written by Defendant. Many of the checks bore the word, "reimbursement" or  
4 listed items Defendant claimed to have purchased for the Club.

5  
6 The crux of this charge is largely based on testimony by the Club Treasurer,  
7 bookkeeper, an auditor, and the *absence* of records to substantiate the claims by  
8 Defendant of legitimate reimbursements.

9 Defendant, in records received after the indictment, may have a colorable  
10 claim that he purchased items for the Club with his money and then had the Club  
11 reimburse him.  
12

13 **Count 4:** 186.10(c)(1)(A); This Count is based on the use of financial institutions and  
14 financial transactions to affect the above three counts. If Counts One through Three  
15 have colorable and plausible defenses, as listed above, then these defenses inure to  
16 the benefit of Defendant on this charge as well.  
17

18 **Count 5:** Section 424(a)(3): This charge relates to the method used to violate Count  
19 One. As stated above, if Count One has a colorable and plausible defense, then those  
20 defenses apply to this count as well.  
21

22 **Count 6:** 487(a): This charge relates to the disbursement of left-over funds by the  
23 National Boys and Girls Club after the Stockton Club had its charter revoked. Has  
24 the charter remained, these monies would have be applied to Count One. Therefore,  
25 any colorable claim by defendant to the monies in Count One, as stated above, would  
26 apply here as well.  
27  
28

Indictment 2018-11200

1  
2       The People to move the court to dismiss Counts 1 through 5, and Counts 7 and  
3 8, in the furtherance of justice, in light of the plea to Count Six and the Harvey  
4 Waiver to Count One.

5  
6       It also bears noting that the Kids Club of Stockton as well as their former  
7 iteration, the Stockton Boys and Girls Club, through their attorney and Board, have  
8 continued to claim that they are not victims of any theft or embezzlement.

CONCLUSION

9  
10       Based on the above facts and circumstances, it is the People's position that the  
11 plea negotiation as is constituted furthers the interest of justice. This plea will  
12 ensure Defendant is held accountable without a protracted use of judicial resources.

13  
14 DATED: May 17, 2019

Respectfully submitted,

TORI VERBER-SALAZAR  
DISTRICT ATTORNEY

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Robert Himelblau  
DEPUTY DISTRICT ATTORNEY