In the Iowa District Court for Polk County

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| **State of Iowa,**  *Plaintiff*,  v.  **,**  *Defendant*. | **Criminal No:**  **Motion to Amend**  **Plea and Sentencing Order**  *Defendant is in custody.* |

Defendant is charged with in violation of Iowa Code §’s .

At the request of the State, the charge(s) is/are amended to ***THEFT FIFTH***, in violation of Iowa Code § 714.2(5)***321.463(10)(A), 321.463(10)(B)****.* .

The State is represented by .

Defendant appears in person and with counsel, ,

Defendant has knowingly, voluntarily, and intelligently waived the right to counsel.

Defendant also appears with interpreter: .

**Order to Amend, Acceptance of Plea, & Sentencing**

**DEFENDANT ENTERS A GUILTY PLEA** to the above charge as amended. The Court is satisfied that Defendant understands the charge, the penal consequences, the rights being waived and finds a factual basis for the plea and that the plea is voluntary. **The Court accepts the amendment. The plea is accepted. IT IS FURTHER ORDERED:**

**DEFENDANT IS ADJUDGED GUILTY** of , in violation of Iowa Code Section ***321.463(10)(A), 321.463(10)(B)***.

Defendant shall pay a $ fine. Defendant is also ordered to pay a **CRIME SERVICES SURCHARGE** of 15% on any portion of the fine which is not suspended.

Defendant shall serve  days in the Polk County Jail. Credit for  days served. **This sentence is suspended**.

Defendant is ordered to complete  hours of **community service** within  days of the date of this order. Defendant shall sign up for community service when signing up for probation. Defendant shall pay required placement fees.

**victim PECUNIARY DAMAGES (vpd).**  Defendant is ordered to pay VPD in the amount of $      for the costs inflicted on the victim(s) of this crime*. (“TBD” means “to be determined” which means that the final, accurate VPD amounts are not available at this time. When such amounts are available, the State may apply for VPD and a supplemental VPD order will follow.)* Defendant has 30 days to contest the amount of VPD. Payment(s) shall be made to the Clerk of Criminal Court, Criminal Courts Building, 110 6th Avenue, Des Moines, IA 50309.The Clerk shall forward payment(s) to      . ***DEFENDANT SHALL NOT BE DISCHARGED FROM PROBATION UNTIL VICTIM RESTITUTION DUE IS PAID IN FULL.***

Defendant shall appear on       in Room      , Polk County Justice Center for a contempt hearing (to show victim pecuniary damages have been paid).

**VICTIM OFFENDER DIALOG (VOD)**.Defendant is ordered to participate in and cooperate with a VOD session to allow the victim to inform Defendant of the consequences of the crime, to determine the amount of victim pecuniary damages (VPD) owed, and to establish a payment schedule. If VPD cannot be resolved in the VOD session, the County Attorney is ordered to file a statement of VPD and Defendant shall have 30 days from the date of the filing to contest the amount of damages claimed. Defendant shall call 286-3057 within three (3) working days to arrange this VOD session. (Session required only if victim wishes to participate). Any No-Contact Order currently in effect shall be temporarily suspended for the VOD session. No-Contact Order shall be in full force and effect upon conclusion of VOD session.

Defendant is ordered to contact Des Moines Area Community College at **964-6800**, (8:00 am to 4:00 pm Mon - Fri) or at ce.dmacctraining.com within **three** working days of this Order or release from jail to enroll in the program checked below. Defendant shall pay the class fee at the time of registration and complete class within 90 days. There is no same day registration.

**FIRST-TIME OFFENDER** Class **ASSAULTIVE BEHAVIOR** Class

**REPEAT OFFENDER** Class **LICENSE UNDER SUSPENSION** Class

**DRIVER IMPROVEMENT** Class

Defendant is ordered to contact Des Moines Area Community College at **964-6800**, (8:00 am to 4:00 pm Mon - Fri) or at ce.dmacctraining.com OR Assessment Services at 327-7036 within **three** working days of this Order or release from jail to enroll in the **DRINKING DRIVER’S** Class. Defendant shall pay the class fee at the time of registration and complete class within 90 days. There is no same day registration.

**Category B Restitution and Reasonable Ability to Pay Analysis**

Iowa law separates restitution into three categories. ***Victim Pecuniary Damages*** includes the damages done to a victim in the course of a crime as set out in Iowa Code § 910.1(3). ***Category A Restitution*** includes fines, surcharges and penalties. Defendant must pay all ***Victim Pecuniary Damages*** and ***Category A Restitution*** and that duty is not subject to a reasonable ability to pay analysis.

***Category B Restitution*** includes court costs, crime victim assistance program reimbursement, expenses incurred by public agencies under Iowa Code §321J.2(13)(b), medical assistance program restitution pursuant to Iowa Code chapter 249A, contributions to a local anti-crime organization and legal assistance fees, (including the expense of a public defender) pursuant to Iowa Code §815.9.

According to Iowa Code §910.2A, Defendant is presumed to have the reasonable ability to pay all ***Category B Restitution and is therefore ordered to pay all Category B Restitution.*** Defendant can challenge the obligation to pay ***Category B Restitution*** by filing a motion within 30 days of this order stating that defendant does not have a reasonable ability to pay ***Category B Restitution*.** The motion must be accompanied by a financial affidavit which must also be served on the prosecutor. Defendant must prove that defendant does not have a reasonable ability to pay ***Category B Restitution*** or the court cannot legally reduce the order to pay such fees.Failure to file a motion or a financial affidavit waives any claim of an inability to pay Category B Restitution. *“Financial* *affidavit”* means a signed affidavit sworn under penalty of perjury that provides specific financial information about Defendant to enable the sentencing court to determine defendant’s reasonable ability to pay Category B Restitution.The affidavit form applying for court-appointed counsel is not sufficient for purposes of determining reasonable ability to pay.

Defendant requests a finding of less than a full ability to pay Category B Restitution. Defendant furnished a completed financial affidavit to the Court and the prosecutor had the opportunity to cross examination on the financial affidavit. Evidence of the amount of attorney fees was presented. The Court therefore makes the following finding regarding Category B Restitution:

**☐ NO ABILITY TO PAY:**  Defendant has no ability to pay ***Category B Restitution*** in any amount.

**☐ PARTIAL ABILITY TO PAY:**  Defendant has the reasonable ability to pay, and is ordered to pay, up to $ for ***Category B Restitution***

**☐ FULL ABILITY TO PAY:**  Defendant has a full ability to pay, and is ordered to pay, all ***Category B Restitution***.

***Defendant is ordered to pay any and all assessed restitution, fines, surcharges, and court costs.*** All payments shall be made to Clerk of Criminal Court, Polk County Criminal Courts Building, 110 6th Avenue, or the Polk County Justice Center, 222 Fifth Avenue, Des Moines, Iowa 50309 or online at [www.iowacourts.gov](http://www.iowacourts.gov). Defendant shall call the Clerk of Court at 286-3772 to verify amounts owed. ***These amounts are delinquent 30 days after all costs are assessed.*** The Clerk shall pay down Category B Restitution according to Iowa Code §910.2(1). If there are multiple cases, the clerk shall divide Category B Restitution costs equally between cases where appropriate. If Defendant fails to pay the total financial obligation due, the case will be transferred for collection. The State of Iowa may withhold any State income tax refund, vehicle registration and/or driver’s license issuance for unpaid court ordered financial obligations.

**Dismissal of Other Counts and Cases**

**DISMISSAL OF OTHER COUNTS AND CASES**. Upon the State’s recommendation, the following counts/cases are dismissed: .  State to pay costs. Pursuant to the plea agreement adopted by the court, Defendant is ordered to pay court costs and any victim restitution associated with these counts and/or cases.

Iowa Code Section 901C.1 allows Defendant to request that a dismissed case be removed from the public record.  Before the request is made or granted each of the following must be true:

1. All charges in the caseare dismissed.
2. At least 180 days have passed since the dismissal or Defendant proves, and the court finds, good cause to act sooner.
3. The dismissal was not based on a finding that Defendant was incompetent or not guilty by reason of insanity.
4. All court costs, fees, or other financial obligations ordered by the court have been paid.

Dismissed case number(s)  are related to a deferred judgment.

**Other Matters**

Unless judgment was deferred, **to** **challenge THIS judgment** defendant must file for EITHER 1) Appeal OR 2) Discretionary Review -- either must be filed with the clerk of court within 10 days or the request will be denied as untimely.  Defendant has a right to Appeal except after a guilty plea which waives the right absent good cause.  Grounds for Discretionary Review are limited by Iowa Code § 814.6(2).  If Defendant cannot afford the expense of Appeal and qualifies financially, an attorney and necessary documents will be furnished at State expense.

Mittimus on any remaining jail days shall issue immediately.

Defendant was personally served with a copy of this order.

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In addition to all other persons entitled to a copy of this order, the Clerk shall provide a copy to the following: DAJCC,