Superior Court of California, County of Humboldt Waiver and Plea to Driving Under the Influence Second Offense (Vehicle Code § 23152)

(For Court Use Only)

Defendant Name:
Case Number:

I, _____, understand that I am charged with driving a vehicle on

(Date) _____ while under the influence of an alcoholic beverage or drugs or both.

Indicate with an "x" which subdivision of Vehicle Code § 23152 Defendant violated: (a)☐(b)☐(c)☐(d)☐(e)☐(f)☐(g)☐

I understand that I am also charged with having a conviction for a separate violation of any of the offenses specified in 23540 of the Vehicle Code with an offense date of: _____, and that this conviction shall be a prior offense for the purpose of subsequent sentencing as specified in Sections 23540, 23546, 23550, 23566 or 23622 of the Vehicle Code if I am convicted of a subsequent offense under Sections 23152 or 23153 of the Vehicle Code which occurs within ten years of this offense. In such a case, this conviction shall not be stricken by the court to avoid imposing the minimum penalties provided in the Vehicle Code for a violation of Sections 23152 or 23153 with prior convictions.

I understand the penalties are:

A. **Maximum: Fine of $1,000.00,** plus penalty assessments of up to $2,700.00, plus additional fees up to an amount of $889.00, plus restitution to victim(s) in an amount to be determined, if any, or restitution fund assessment of $1,000.00, 1 year in jail, DMV suspension of driving privilege for 2 years, vehicle impoundment at defendant-owner's expense for 30 days (unless defendant was driving another's vehicle or is exempted pursuant to Vehicle Code Section 23594), installation of an Ignition Interlock Device for 1-3 years pursuant to Vehicle Code Section 23575, possible court disallowance of DMV's ability to issue a restricted license pursuant to Vehicle Code Section 23542(d), and surrender to the court of driver's license.

B. **Minimum Without Probation**: Fine of $390.00, plus penalty assessments of $1053.00, plus additional fees up to an amount of $767.00, plus restitution to victim(s) in an amount to be determined, if any, or restitution fund assessment of $150.00, 90 days in jail, a t least 48 hours of which shall be continuous or at least 10 days of community service in lieu of the 48 continuous hours, suspension of driving privilege for 2 years, installation of an Ignition Interlock Device for 12 months, and surrender to the court of driver's license.

C. **Minimum With 3 to 5 Years Probation:** Fine of $390.00, plus penalty assessments of $1053.00, plus additional fees up to an amount of $767.00, plus restitution to victim(s) in an amount to be determined, if any, or restitution fund assessment of $150.00 plus an additional $150.00 suspended pending violation of probation, installation of an Ignition Interlock Device for 12 months, license suspension for 2 years, and either (1) 10 days in jail, or (2) 96 hours in jail, which shall be served in two increments of 48 continuous hours each, and either: (1) participation in an 18-month driving-under-the-influence program, or (2) participation in a 30-month driving-under-the-influence program. (Note: defendant will not be eligible for a license until an approved driving-under-the-influence program is completed.) Standard probation terms and conditions to include: obey all laws, not drive a motor vehicle with any drugs or measurable amount of alcohol in your system, not refuse to complete a blood alcohol chemical test when offered by any peace officer, not drive without a valid California driver's license or without valid insurance.

D. **Assessment Program**: I understand that I may be ordered to attend an alcohol and drug problem assessment program, and that I will be required to do so if I have been required to attend a licensed program pursuant to court order and failed at least once to comply with the rules and policies of the licensed program other than a rule related to the payment of fees (Vehicle Code Section 23646(b)).

E. **Ignition Interlock Device:** I understand that, if convicted of an offense that occurred on or after July 1, 2010, I will be required to install a certified ignition interlock device in any vehicle owned or operated by me, which will prevent the vehicle from starting if I have alcohol in my body, for a specified term of up to 48 months as required by the Department of Motor Vehicles prior to receiving reissuance of license or restricted license. Additionally, the court may also require this device for a term of one to three years. This requirement will be imposed if I am convicted hereafter of driving while my license is suspended or in violation of license restrictions.

F. **Refusal**: If I refused a chemical test (Vehicle Code Section 23577) 96 hours will be added to the jail term imposed.

G. **Commercial Vehicle:** I understand that the DMV will prohibit me from operating a commercial vehicle for one year if I am convicted of either of the following that occurred in any vehicle: 1) a first DUI offense or, 2) willful refusal to submit to or complete a chemical test to determine my blood alcohol level. The DMV will prohibit me from operating a commercial vehicle ever again if I am convicted of either of the following that occurred in any vehicle: 1) a second or subsequent DUI offense or, 2) willful refusal to submit to or complete a chemical test.

I understand that if I am not a citizen of the United States, a plea of guilty or no contest could result in my being deported from the United States, excluded from admission to the United States, or denied naturalization as a United States Citizen.
I have discussed any applicable immigration consequences with my attorney.
I understand that if I am currently on probation or parole for any other criminal offense, that such probation could be revoked as a result of my plea today.

I understand that in order to become eligible for a California driver's license, I must give satisfactory proof to the Department of Motor Vehicles of successful completion of an 18-month alcohol rehabilitation program.

I understand that my driver's license suspension or revocation from DMV administrative proceedings is independent of court-imposed penalties and that my driving privilege will not be restored until I provide satisfactory proof to the DMV that I successfully completed the required driving-under-the -influence program, whether or not such a program is required by the court.

READ AND COMPLETE REVERSE

DEFENDANT TO PERSONALLY WRITE YES OR NO IN EACH BOX:	I understand this right	I give up this right
1. Right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be found guilty unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my lawyer, to participate in jury selection.		
2. Right to confront and cross examine all witnesses against me.		
3. Right to remain silent and not incriminate myself.		
4. Right to subpoena and produce evidence.		
5. Right to be sentenced by a judge: I understand that by giving up this right I stipulate that I may be sentenced by a temporary judge.		
6. Right to be represented by an attorney at all stages of the proceedings and to have the court appoint one at no charge if I cannot afford my own.		
7. Right to delay sentencing not less than 6 hours nor more than 5 days after the entry of this plea.		

DEFENDANT TO PERSONALLY WRITE YES IN ONE OF THE TWO BOXES:	
REPRESENTED BY SELF: I give up my right to an attorney	
REPRESENTED BY AN ATTORNEY: I have discussed my case with an attorney, we discussed the rights I am giving up by my plea, the elements of the offense(s) charged, the possible defenses and the consequences of my plea.	

Vehicle Code Section 23593(a) states: "You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder."

I have read this document or have had it read for me, and I understand it. I have personally and voluntarily placed the answers in the boxes.

I enter a plea of _____(No Contest or Guilty) to the charge(s) of violation of the Vehicle Code Section

_____ and I admit the separate conviction as alleged.

Signed: _____ Date: _____

ATTORNEY'S STATEMENT

I certify that I am the attorney of record for the defendant; that I have fully discussed matters herein with the defendant and advised the defendant thereon;

- that I have explained each of the above rights to the defendant, and the representations of the defendant are the defendant's own;
- that I have explored the facts with defendant and studied defendant's possible defenses to the charge(s);
- that I have discussed the nature of the charges and direct consequences of entering a plea;
- that I have advised about the immigration consequences of a proposed disposition, and defended against those consequences consistent with the goals of and with the informed consent of the defendant and professional standards;
- that I believe that the plea and waivers are intelligently and expressly made;
- that I join the plea and waivers; that I stipulate there is a factual basis for the plea and that the time is waived for judgment and sentencing.

The immigration aspect is based on California Penal Code Section 1016.3 (a).

☐ Absentia form attached.

Signed: _____ Date: _____

INTERPRETER'S STATEMENT

I, _____, a certified/registered interpreter, having been sworn, truly translated this form and all the questions therein to the defendant in the language. With the exception of the defendant's signature, I have completed this form at the defendant's direction. The defendant indicated understanding the contents of the form and then signed the form.

Signed: _____ Date: _____

FINDINGS AND ORDER

The Court, having reviewed this form (and any addenda) and having orally examined the defendant, finds as follows:

1. The initialed items in this form have been read by or read to the defendant, and the defendant understands each of them as to each count to which the defendant pled.
2. The defendant understands the nature of the crimes, prior convictions, enhancements, allegations, and the consequences of the plea and any admissions as to each count to which the defendant pled.
3. The defendant expressly, knowingly, understandingly, and intelligently waives the constitutional and statutory rights associated with the plea as to each count to which the defendant pled.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily with an understanding of the nature of the consequences thereof as to each count to which the defendant pled.
5. A factual basis exists for the plea and admissions, or the defendant is pleading under a plea bargain under People v. West; in either case the factual basis exists for the plea and admissions as to each count to which the defendant pled.

The Court accepts the defendant's plea(s), admission(s), and waiver of rights, and the defendant is hereby convicted based thereon as to each count to which the defendant pled.

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 as to each count to which the defendant pled.

Signed: _____ Date: _____
(Judge / Temporary Judge, Superior Court of California, County of Humboldt)