

1 exhibits, and the record of prior proceedings that the moving party is not entitled to relief.”
2 Rule 4(b), Rules Governing Section 2255 Proceedings for the United States District courts.
3 When this standard is satisfied, neither a hearing nor a response from the government is
4 required. *See Marrow v. United States*, 772 F.2d 525, 526 (9th Cir. 1985).

5 **RULING OF THE COURT**

6 In this case, the record conclusively shows that the Defendant has waived his right to
7 bring a § 2255 motion. In the Plea Agreement, the Defendant agreed as follows:

8 In exchange for the Government’s concessions in this plea agreement, defendant
9 waives, to the full extent of the law, any right to appeal or to collaterally attack
10 the conviction and sentence, ... unless the Court imposes a custodial sentence
11 above the greater of the high end of the guideline range recommended by the
12 Government pursuant to this agreement at the time of sentencing or statutory
13 mandatory minimum term, if applicable. If the custodial sentence is greater than
14 the high end of that range, the defendant may appeal, but the Government will
15 be free to support on appeal the sentence actually imposed. If defendant
16 believes the Government’s recommendation is not in accord with this agreement,
17 defendant will object at the time of sentencing; otherwise the objection will be
18 deemed waived.

14 (ECF No. 16 at 10). This waiver is clear, express and unequivocal. Plea agreements are
15 contractual in nature, and their plain language will generally be enforced if the agreement is
16 clear and unambiguous on its face. *United States v. Jeronimo*, 298 F.3d 1149, 1153 (9th Cir.
17 2005).

18 In this case, the Government recommended an adjusted offense level of 23 pursuant to
19 the plea agreement and a resulting guideline range of 46-57 months. (ECF No. 31). The Court
20 imposed a sentence of 30 months. (ECF No. 37 at 2). The sentence imposed was not “greater
21 of the high end of the guideline range recommended by the Government pursuant to this
22 agreement at the time of sentencing.” (ECF No. 16 at 10). Pursuant to the terms of the plea
23 agreement, the Defendant waived his right to collaterally attack the sentence imposed.

24 **IT IS HEREBY ORDERED** that the motion for time reduction by an inmate in federal
25 custody under 28 U.S.C. § 2255 (ECF No. 41) filed by the Defendant is denied.

26 DATED: April 9, 2013

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28 **WILLIAM Q. HAYES**
United States District Judge