

FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
2016 SEP 21 P 3:48 SOUTHERN DIVISION

U.S. DISTRICT COURT
UNITED STATES OF AMERICA)

v.)

NABIL CHAGRI)

Case No.

2:16-CR-296-AKK-TMP

PLEA AGREEMENT

The government and the defendant, **NABIL CHAGRI**, hereby acknowledge the following plea agreement in this case:

PLEA

The defendant agrees to plead guilty to COUNT ONE of the Information filed in the above numbered and captioned matter. In exchange, the United States Attorney, acting on behalf of the government and through the undersigned Assistant United States Attorney, agrees to recommend the disposition specified below, subject to the conditions in sections IX and X.

TERMS OF THE AGREEMENT

I. MAXIMUM PUNISHMENT

The defendant understands that the maximum statutory punishment that may be imposed for the crime of felony receipt and delivery or proffer for delivery of misbranded drugs, in violation of Title 21, United States Code, Sections 331(c), 333(a)(2), and 352(a), as charged in COUNT ONE, is:

- a. Imprisonment for not more than 3 years;
- b. A fine of not more than \$250,000; or,
- c. Both (a and b);
- d. Supervised release of not more than 1 year; and
- e. Special Assessment Fee of \$100 per count.

II. FACTUAL BASIS FOR PLEA

To convict the defendant of violating 21 U.S.C. §§ 331(c), 333(a)(2), and 352(a), the government would be required to prove beyond a reasonable doubt, that (a) the “male enhancement products” at issue in this case were “drugs”; (b) the defendant received those drugs in interstate commerce; (c) at the time the drugs were received by the defendant, they were misbranded; (d) after the defendant received the misbranded drugs, the defendant delivered those drugs, or proffered the delivery of those drugs, for pay or otherwise; and (e) the defendant acted with the intent to defraud or mislead. Intent to defraud or mislead includes acting with intent to

defraud and mislead governmental agencies, including the FDA.

The defendant acknowledges that the government can establish all the above elements beyond a reasonable doubt. As to the first element, the “male enhancement products,” in this case include Libigro, Rhino 7, Rhino 8, Extenze, Stiff Nights, Gold Reallas, Stree Overlord, Black Ant, Man Up, Man King, Hard Ten Days, S.W.A.G., and Zhen Gong Fu. These male enhancement products contained either sildenafil citrate (“sildenafil”) or tadalafil, the active pharmaceutical ingredients in Viagra and Cialis respectively, both of which are FDA approved prescription drugs for the treatment of erectile dysfunction. These male enhancement products are drugs under the Federal Food, Drug, and Cosmetic Act (“FDCA”) because they are intended to treat a disease in man and/or affect the structure or function of the body of man. 21 U.S.C. §§ 321(g)(1)(B) and (C). Further, they are “prescription drugs” because of their toxicity and other potential for harmful effects, and the collateral measures necessary to use them. 21 U.S.C. § 353(b)(1). In addition to various side effects, as described in multiple FDA public health alerts, drugs containing sildenafil and/or tadalafil can be particularly harmful to persons taking medications containing nitrates, such as nitroglycerin, because sildenafil and tadalafil can interact with the nitrates and lower blood pressure to dangerous levels. Men with diabetes, high blood pressure, high cholesterol, or heart disease often take nitrates. Zhen Gong Fu, charged in Count One, contains sildenafil.

As to the second element, the defendant received these male enhancement drugs, including Zhen Gong Fu, via interstate commerce, as defined by 21 U.S.C. § 321(b), insofar as they were mailed from China to him at various addresses in the Northern District of Alabama, United States.

As to the third element, at the time the drugs were sent to him, they were misbranded because their labeling, *i.e.*, the “display of written, printed, or graphic matter upon the immediate container of any article,” 21 U.S.C. § 321(k), *see also* 21 U.S.C. § 321(m), was false and misleading under 21 U.S.C. § 352(a). More specifically, the labeling for all the male enhancement drugs received by the defendant did not state that they contained sildenafil or tadalafil, and the labeling for some of the drugs contained false and misleading information with respect to, among other things, its use by people with heart diseases. As to Count One, the labeling for the Zhen Gong Fu (1) did not state that it contained sildenafil, and (2) further stated:

This product is the substitute for American Viagra successfully developed by Hong Kong Hongwei Biological Research Center in 2007 after years of clinical trials and the best challenger of Xilishi. It can quickly elongate, thicken and enlarge the penis to effectively rescue you from short sexual intercourse time, take good therapeutic effect on preventing impotence and premature ejaculation, It does not affect heart diseases [sic], hypertension or diabetes. It is of good therapeutic effect on prostate disease. Alcohol does not interfere with its therapeutic effect.

(emphasis added). Similarly, the labeling for Stree Overlord stated in part, “People with heart disease and hypertension canalso [sic] take it.”

As to the fourth element, after receiving the misbranded male enhancement drugs, the defendant sold them or offered to sell them to wholesale supply stores as well as gas stations.

As to the fifth element, the defendant acted with the intent to defraud or mislead. *First*, in accordance with import regulations, the FDA detained multiple packages containing male enhancement products that were *en route* from China to the defendant. The FDA sent import detention notices to the defendant, informing him of the detention, the reason for it (that the contents of the package appeared to be misbranded, adulterated, and/or contained suspected unapproved drugs), and inviting him to challenge the decision to detain the packages. Between March 2015 and March 2016, the FDA issued eight import detention notices to the defendant at various addresses, relating to various male enhancement drugs including Zhen Gong Fu, Gold Reallas, Stiff Nights, Man-Up, Hard Ten Days, and Rhino 7. The defendant received the detention notices, but nonetheless continued to cause to be sent to him and received shipments of additional packages containing male enhancement drugs. *Second*, the defendant caused different and sometimes fictitious names to be used on the mailings of the drugs in an effort to mislead and evade detection by law enforcement. For instance, mailings were addressed to “Amanah Wholesale,” a name associated with a business for which the defendant is a registered agent; “Chagri Enterprises,” a non-existent entity; “Navel Enterprises”, a

non-existent entity; and “Bill Enterprise,” also a non-existent entity. *Third*, the defendant further caused the shipments of the male enhancement drugs to be sent to multiple different addresses, including non-existent addresses (but addresses connected to the same apartment building), also in an effort to mislead and evade law enforcement. (The false addresses did not impact the defendant’s ability to receive the packages because due to their large size and weight, the packages were held for pick-up by the post office and the defendant would track the packages online so that he knew when to pick them up). *Fourth*, the defendant purchased the drugs knowing that the packages in which they were sent would be falsely labeled as containing “beauty products.”

The defendant acknowledges that the government can establish the conduct charged in Count One of the Information beyond a reasonable doubt. That is, that on or about March 22, 2016, he with intent to defraud and mislead, received in interstate commerce drugs, namely Zhen Gong Fu, a “male enhancement product” containing the undeclared ingredient sildenafil citrate, that were misbranded in that their labeling was false or misleading in a particular, and delivered or proffered delivery of such misbranded drugs for pay or otherwise. The defendant and government further stipulate that for purposes of calculating the guideline range, the loss amount in this case is in the range of \$95,000 and \$150,000.

The defendant hereby stipulates that the facts stated above are

substantially correct and that the Court can use these facts in calculating the defendant's sentence. The defendant further acknowledges that these facts do not constitute all of the evidence of each and every act that the defendant and/or any co-conspirators may have committed.


NABIL CHAGRI

III. COOPERATION BY THE DEFENDANT

The defendant agrees to waive the Fifth Amendment privilege against self-incrimination and to provide **TRUTHFUL AND COMPLETE INFORMATION** to the government concerning all aspects of the charged crimes, including, but not limited to, the defendant's role and participation in the offenses, as well as the roles and the participation of all other persons involved in these crimes of whom the defendant has knowledge. The defendant agrees to testify against all of those individuals at any time requested by the government, including at any Grand Jury proceeding, forfeiture proceeding, bond hearing, pretrial hearing, trial, retrial, or post-trial hearing. **ALL SUCH INFORMATION AND TESTIMONY SHALL BE TRUTHFUL AND HONEST AND WITH NO KNOWING MATERIAL FALSE STATEMENTS OR OMISSIONS.** The defendant waives any witness fees to which he otherwise

may be entitled if he is subpoenaed to testify against any of her co-defendants or co-conspirators.

Further, the defendant agrees to provide assistance and cooperation to the government as defined and directed by the Federal Bureau of Investigations, or any other investigative agency or body as the United States Attorney for the Northern District of Alabama may authorize, which cooperation may include the defendant's periodic submission to a polygraph examination to determine the truthfulness and accuracy of the defendant's statements and information.

IV. MOTION PURSUANT TO USSG § 5K1.1

In the event the defendant provides assistance that rises to the level of "substantial assistance," as that term is used in USSG § 5K1.1, the government agrees to file a motion requesting a downward departure in the calculation of the defendant's advisory guideline sentence. Should any of the counts of conviction subject the defendant to a mandatory minimum sentence, the government may also seek a sentence reduction below said mandatory minimum sentence, by including in its motion a recommendation pursuant to the provisions of 18 U.S.C. § 3553(e). The defendant agrees that the determination of whether defendant's conduct rises to the level of "substantial

assistance” and/or whether defendant’s conduct merits consideration under 18 U.S.C. § 3553(e) lies solely in the discretion of the United States Attorney’s Office. Furthermore, the defendant agrees that the decision as to the degree or extent of the downward departure requested, if any, also lies in the sole discretion of the United States Attorney’s Office.

Any motion pursuant to Section 5K1.1 and/or 18 U.S.C. § 3553(e) will be filed before the defendant’s sentencing hearing and will outline all material assistance which the defendant has provided. The defendant clearly understands and acknowledges that, because the defendant’s plea is being offered in accordance with Rule 11(c)(1)(B), Fed.R.Crim.P., the Court will not be bound by the government’s recommendation and may choose not to reduce the sentence at all.

V. RECOMMENDED SENTENCE

Subject to the limitations in section X regarding subsequent conduct and pursuant to Rule 11(c)(1)(B), Fed. R. Crim. P., the government will recommend the following disposition:

- a. That the defendant be awarded an appropriate reduction in offense level for acceptance of responsibility;
- b. That the defendant be remanded to the custody of the Bureau of Prisons and incarcerated for a term consistent with the low end of the advisory United States Sentencing Guideline range as that is determined by the court on the date that the sentence is pronounced;
- c. That following the said term of imprisonment, the defendant be placed on supervised release for a period to be determined by the court, subject to the standard conditions of supervised release as set forth in U.S.S.G § 5D1.3, and any special condition(s) ordered by the Court;
- d. That the defendant be required to pay a fine in accordance with the sentencing guidelines, said amount due and owing as of the date sentence is pronounced, with any outstanding balance to be paid in full by the expiration of the term of supervised release;

- e. That the defendant pay a special assessment fee of \$100, said amount due and owing as of the date sentence is pronounced.

VI. WAIVER OF RIGHT TO APPEAL AND POST-CONVICTION RELIEF

In consideration of the recommended disposition of this case, I, NABIL CHAGRI, hereby waive and give up my right to appeal my conviction and/or sentence in this case, as well as any fines, restitution, and forfeiture orders, the court might impose. Further, I waive and give up the right to challenge my conviction and/or sentence, any fines, restitution, forfeiture orders imposed or the manner in which my conviction and/or sentence, any fines, restitution, and forfeiture orders were determined in any post-conviction proceeding, including, but not limited to, a motion brought under 28 U.S.C. § 2255.

The defendant reserves the right to contest in an appeal or post-conviction proceeding the following:

- a. Any sentence imposed in excess of the applicable statutory maximum sentence(s);
- b. Any sentence imposed in excess of the guideline sentencing range determined by the Court at the time sentence is imposed; and
- c. Ineffective assistance of counsel.

The defendant acknowledges that before giving up these rights, the defendant discussed the Federal Sentencing Guidelines and their application to the defendant's case with the defendant's attorney, who explained them to the defendant's satisfaction. The defendant further acknowledges and understands that the Government retains its right to appeal where authorized by statute.

I, NABIL CHAGRI, hereby place my signature on the line directly below to signify that I fully understand the foregoing paragraphs, and that I am knowingly and voluntarily entering into this waiver.



NABIL CHAGRI

VII. UNITED STATES SENTENCING GUIDELINES

Defendant's counsel has explained to the defendant, that in light of the United States Supreme Court's decision in United States v. Booker, the federal sentencing guidelines are **advisory** in nature. Sentencing is in the Court's discretion and is no longer required to be within the guideline range. The defendant agrees that, pursuant to this agreement, the Court may use facts it finds by a preponderance of the evidence to reach an advisory guideline range, and defendant explicitly waives any right to have those facts found by a jury beyond a reasonable doubt.

VIII. AGREEMENT NOT BINDING ON COURT

The defendant fully and completely understands and agrees that it is the Court's duty to impose sentence upon the defendant and that any sentence recommended by the government is **NOT BINDING UPON THE COURT**, and that the Court is not required to accept the government's recommendation. Further, the defendant understands that if the Court does not accept the government's recommendation, the defendant does not have the right to withdraw the guilty plea.

IX. VOIDING OF AGREEMENT

The defendant understands that should the defendant move the Court to accept the defendant's plea of guilty in accordance with, or pursuant to, the provisions of North Carolina v. Alford, 400 U.S. 25 (1970), or tender a plea of nolo contendere to the charges, this agreement will become NULL and VOID. In that event, the Government will not be bound by any of the terms, conditions, or recommendations, express or implied, which are contained herein.

X. SUBSEQUENT CONDUCT

The defendant understands that should the defendant violate any condition of pretrial release or violate any federal, state, or local law, or should the defendant say or do something that is inconsistent with acceptance of responsibility, the United States will no longer be bound by its obligation to make the recommendations set forth in section V of the Agreement, but instead,

may make any recommendation deemed appropriate by the United States Attorney in her sole discretion.

XI. OTHER DISTRICTS AND JURISDICTIONS

The defendant understands and agrees that this agreement **DOES NOT BIND** any other United States Attorney in any other district, or any other state or local authority.

XII. COLLECTION OF FINANCIAL OBLIGATION

In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees to fully disclose all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The defendant also will promptly submit a completed financial statement to the United States Attorney's Office, in a form that it provides and as it directs. The defendant also agrees that the defendant's financial statement and disclosures will be complete, accurate, and truthful. Finally, the defendant expressly authorizes the United States Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

XIII. AGREEMENT REGARDING RELEVANT CONDUCT AND RESTITUTION

As part of the defendant's plea agreement, the defendant admits to the above facts associated with the charges and relevant conduct for any other acts. The defendant understands and agrees that the relevant conduct contained in the factual basis will be used by the Court to determine the defendant's range of punishment under the advisory sentencing guidelines. The defendant admits that all of the crimes listed in the factual basis are part of the same acts, scheme, and course of conduct. This agreement is not meant, however, to prohibit the United States Probation Office or the Court from considering any other acts and factors which may constitute or relate to relevant conduct. Additionally, if this agreement contains any provisions providing for the dismissal of any counts, the defendant agrees to pay any appropriate restitution to each of the separate and proximate victims related to those counts should there be any.

XIV. TAX, FORFEITURE AND OTHER CIVIL/ADMINISTRATIVE PROCEEDINGS

Unless otherwise specified herein, the defendant understands and acknowledges that this agreement does not apply to or in any way limit any pending or prospective proceedings related to defendant's **tax liabilities**, if any, or to any pending or prospective **forfeiture** or other **civil** or **administrative** proceedings.

Defendant recognizes that pleading guilty may have consequences with

respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is his automatic removal from the United States.

XV. DEFENDANT'S UNDERSTANDING

I have read and understand the provisions of this agreement consisting of **18 pages**. I have discussed the case and my constitutional and other rights with my lawyer. I am satisfied with my lawyer's representation in this case. I understand that by pleading guilty, I will be waiving and giving up my right to continue to plead not guilty, to a trial by jury, to the assistance of counsel at that trial, to confront, cross-examine, or compel the attendance of witnesses, to present evidence in my behalf, to maintain my privilege against self-incrimination, and to the presumption of innocence. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

NO OTHER PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME BY THE PROSECUTOR, OR BY ANYONE ELSE, NOR HAVE ANY THREATS BEEN MADE OR FORCE USED TO INDUCE ME TO PLEAD GUILTY.

I further state that I have not had any drugs, medication, or alcohol within the past 48 hours except as stated here:

None diabetes medication (prescribed) N.C

I understand that this Plea Agreement will take effect and will be binding as to the Parties **only** after all necessary signatures have been affixed hereto.

I have personally and voluntarily placed my initials on every page of this Agreement and have signed the signature line below to indicate that I have read, understand, and approve all of the provisions of this Agreement, both individually and as a total binding agreement.

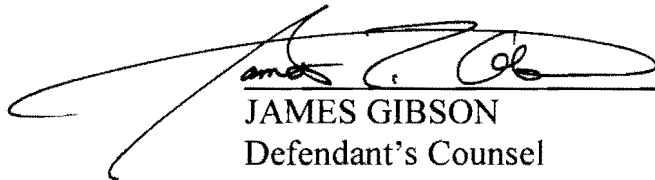
9/20/16
DATE


NABIL CHAGRI
Defendant

XVI. COUNSEL’S ACKNOWLEDGMENT

I have discussed this case with my client in detail and have advised my client of all of my client’s rights and all possible defenses. My client has conveyed to me that my client understands this Agreement and consents to all its terms. I believe the plea and disposition set forth herein are appropriate under the facts of this case and are in accord with my best judgment. I concur in the entry of the plea on the terms and conditions set forth herein.

9/20/2016
DATE



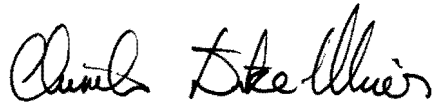
JAMES GIBSON
Defendant’s Counsel

XVII. GOVERNMENT’S ACKNOWLEDGEMENT

I have reviewed this matter and this Agreement and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

JOYCE WHITE VANCE
United States Attorney

9/21/16
DATE



CHINELO DIKÉ-MINOR
Assistant United States Attorney