

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

JUSTIN T. PAGLUSCH

No. 15 CR 50011-4

Judge Frederick J. Kapala

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant JUSTIN T. PAGLUSCH, and his attorney, FRANK COOK, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2. The superseding indictment in this case charges defendant with conspiring to manufacture 1,000 or more marijuana plants and to distribute marijuana, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

3. Defendant has read the charge against him contained in the superseding indictment, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the superseding indictment, which charges defendant with conspiring to

manufacture 1,000 or more marijuana plants and to distribute marijuana, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

a. Beginning at least as early as November 2014 and continuing to January 6, 2015, at Rockford, in the Northern District of Illinois, Western Division, and elsewhere, defendant, Jeremiah N. Clement (“Clement”), George H. Bacus (“Bacus”), Yousif Y. Pira (“Pira”), Shlimon Shimon (“Shimon”), Casey Williams (“Williams”), and Destiny Freeman (“Freeman”), conspired with each other knowingly and intentionally to manufacture a controlled substance, namely 1,000 or more marijuana plants, a Schedule I Controlled Substance, and to distribute marijuana, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

b. Specifically, in November 2014, Clement, who is defendant’s cousin, contacted defendant and asked defendant to come and work at a warehouse located at 1916 11th Street in Rockford, Illinois (“the warehouse”). Defendant agreed to work at the warehouse and arrived at the warehouse in November 2014. After arriving at the warehouse in November 2014, defendant learned that Clement and others were involved in a marijuana growing operation inside the warehouse.

Defendant agreed to assist Clement in the marijuana growing operation at the warehouse. During the time defendant participated in the conspiracy to manufacture and distribute marijuana, defendant lived at the warehouse in room on the third floor.

c. As part of the marijuana growing operation on the fourth floor of the warehouse, there were three sections where marijuana plants were being grown. Each of the three sections had 45 rows with 9 plants in each row for a total of approximately 1,215 plants. There were two different types of marijuana being grown on the fourth floor of the warehouse, "OG Kush" and "Sour Diesel." Water collection pools were set up on the first floor of the warehouse, toward the back of the building, to collect rain water which would then be pumped back up to the fourth floor to water the marijuana plants. An irrigation system using PVC pipe was installed on the fourth floor to help defendant, Clement, Williams and Freeman water the marijuana plants daily. Defendant, Clement or Williams placed plant chemicals in the water to feed the marijuana plants. When defendant arrived at the warehouse in November 2014, the approximately 1,215 plants were almost ready to be harvested.

d. In addition to the large room containing the marijuana plants, there was also a smaller room on the fourth floor of the warehouse, at the front of the building facing 11th Street, which housed the baby or "clone" marijuana plants. That room contained approximately 12-15 trays each containing approximately 20 clone marijuana plants per tray.

e. Defendant, Clement, Bacus, Williams, and Freeman started harvesting the crop of finished marijuana plants approximately a few days before December 9, 2014. The trimmed marijuana leaves were placed into large dark or light blue colored plastic bins labeled OG Kush or Sour Diesel. Defendant and his co-defendants could distinguish the two types of marijuana plants at harvest time as each variety had some distinct signature characteristics. The harvested marijuana was weighed and packaged into one pound amounts and vacuum sealed. The processed marijuana was stored in a vault at the warehouse, which had a combination lock. Defendant did not know the combination for the lock.

f. Defendant, Clement and Bacus were still in the process of harvesting the marijuana crop when defendant learned that the warehouse had burned down in the early morning hours of January 6, 2015. Defendant had been with Clement at a hotel in Rockford earlier in the evening of January 5, 2015 when Clement left the hotel in U-Haul truck. When Clement did not return to the hotel on January 6, 2015, defendant called a friend who picked him up at the hotel later in the morning of January 6, 2015.

g. During the period of the conspiracy, defendant was aware that Clement kept a chrome-plated .357 Ruger revolver at the warehouse for protection, which was possessed by primarily by Clement. On one occasion, defendant picked up the revolver to look at it.

### **Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of life imprisonment, and a statutory mandatory minimum sentence of 10 years. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation for this offense. This offense also carries a maximum fine of \$4,000,000. Defendant further understands that the judge also must impose a term of supervised release of at least five years, and up to any number of years, including life.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

### **Sentencing Guidelines Calculations**

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the

defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of the offense or at sentencing, whichever results in a lesser sentencing range. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2016 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the charge in Count One of the superseding indictment is 24, pursuant to Guideline § 2D1.1(c)(4) and Note (E) of the Notes to Drug Quantity Table because the offense involved the equivalent of more than 100 kilograms but less than 400 kilograms of marijuana;

ii. The government will contend that the base offense level is increased by two levels to level 26, pursuant to Guideline § 2D1.1(b)(1), because defendant possessed a firearm as part of the offense. Defendant reserves the right to challenge this adjustment.

iii. Pursuant to Guideline §2D1.1(b)(12), the government will contend that because the defendant maintained a premises for the purpose of manufacturing and distributing a controlled substance, the offense level is increased by two levels to level 28. Defendant reserves the right to challenge this adjustment.

iv. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

v. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

vi. Defendant understands that should he falsely deny or otherwise frivolously contest the scope of the offense and relevant conduct, such

conduct would be inconsistent with acceptance of responsibility and the government will contest the application of Guideline §§ 3E1.1(a) and (b), and defendant could lose the three-level reduction for acceptance of responsibility.

vii. If the Court determines that Guideline § 5C1.2 and Title 18, United States Code, Section 3553(f) are applicable, the Court shall impose a sentence without regard to any statutory minimum sentence, and the offense level shall be reduced by two levels, pursuant to Guideline § 2D1.1(b)(16).

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government and stipulated below, defendant's criminal history points equal 1 and defendant's criminal history category is I:

i. On or about August 9, 2006, defendant was convicted of assault, a misdemeanor, in the Circuit Court of Cook County, Illinois and sentenced to 1 year of court supervision, resulting in the assignment of 1 criminal history point pursuant to Guideline § 4A1.1(c).

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the government will contend that the offense level is 25, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 57 to 71 months' imprisonment, in addition to any supervised release and fine the Court may impose. Defendant will contend that the offense level



is 19, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 30 to 37 months' imprisonment, in addition to any supervised release and fine the Court may impose. Defendant also acknowledges that he is subject to a statutory minimum sentence of 10 years' imprisonment, if the Court determines that it applies.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the

Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

### **Agreements Relating to Sentencing**

11. The government agrees to recommend that the Court impose a sentence of imprisonment within the applicable guideline range, subject to the statutory mandatory minimum sentence of 10 years, if it applies, pursuant to Guideline § 5G1.1, and to make no further recommendation concerning what sentence of imprisonment should be imposed.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

14. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the indictment as to defendant.

## Acknowledgments and Waivers Regarding Plea of Guilty

### **Nature of Agreement**

15. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 15 CR 50011-4.

16. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

17. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge

sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

18. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

19. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the

nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

20. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

21. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to

the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

### **Other Terms**

22. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

23. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

### **Conclusion**

24. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

25. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court

permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

26. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

27. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

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ZACHARY T. FARDON  
United States Attorney

\_\_\_\_\_  
JUSTIN T. PAGLUSCH  
Defendant

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JOSEPH C. PEDERSEN  
Assistant U.S. Attorney

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FRANK COOK  
Attorney for Defendant