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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13 v.
14 ERIK GESUS RIVERA,
15 Defendant.

CASE NO. 1:14 CR 00048
PLEA AGREEMENT
COURT: Hon. Lawrence J. O'Neill

16
17 I. INTRODUCTION

18 A. Scope of Agreement

19 The indictment in this case charges the defendant with a violations of 21 U.S.C. Section 846
20 Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine and Heroin, (Count 1);
21 21 U.S.C. §§ 841(a)(1) Possession with the Intent to Distribute Methamphetamine,(Count 2); and 21
22 U.S.C. §§ 841(a)(1) Possession with the Intent to Distribute Heroin, (Count 3) . This document
23 contains the complete plea agreement between the United States Attorney's Office for the Eastern
24 District of California (the "government") and the defendant regarding this case. This plea agreement is
25 limited to the United States Attorney's Office for the Eastern District of California and cannot bind any
26 other federal, state, or local prosecuting, administrative, or regulatory authorities.

27 B. Court Not a Party

28 The Court is not a party to this plea agreement. Sentencing is a matter solely within the

1 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
2 concerning the criminal activities of defendant, including activities that may not have been charged in
3 the indictment. The Court is under no obligation to accept any recommendations made by the
4 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
5 including the statutory maximum stated in this plea agreement.

6 If the Court should impose any sentence up to the maximum established by the statute, the
7 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
8 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
9 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
10 receive.

11 II. DEFENDANT'S OBLIGATIONS

12 A. Guilty Plea

13 The defendant will plead guilty to Count 2, Possession with the Intent to Distribute
14 Methamphetamine in violation of 21 U.S.C. 841(a)(1). The defendant agrees that he is in fact guilty of
15 these charges and that the facts set forth in the Factual Basis For Plea attached hereto as Exhibit A are
16 accurate.

17 The defendant agrees that this plea agreement will be filed with the Court and become a part of
18 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
19 plea should the Court not follow the government's sentencing recommendations.

20 The defendant agrees that the statements made by him in signing this Agreement, including the
21 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
22 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
23 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal
24 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these
25 rules are inconsistent with this paragraph or with this Agreement generally.

26 B. Special Assessment

27 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
28 a check or money order payable to the United States District Court to the United States Probation Office

1 immediately before the sentencing hearing. The defendant understands that this plea agreement is
2 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the
3 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
4 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

5 **C. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

6 If the defendant, violates this plea agreement in any way, withdraws his plea, or tries to withdraw
7 his plea, this plea agreement is voidable at the option of the government. The government will no longer
8 be bound by its representations to the defendant concerning the limits on criminal prosecution and
9 sentencing as set forth herein. Any post-plea conduct by a defendant constituting obstruction of justice
10 will also be a violation of the agreement. The determination whether the defendant has violated the plea
11 agreement shall be decided under a probable cause standard.

12 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
13 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded
14 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file
15 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
16 be subject to prosecution for any federal criminal violation of which the government has knowledge,
17 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
18 options is solely in the discretion of the United States Attorney's Office.

19 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
20 defenses that the defendant might have to the government's decision to exercise the options stated in the
21 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as
22 of the date of this plea agreement may be commenced in accordance with this paragraph,
23 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement
24 and the commencement of any such prosecutions. The defendant agrees not to raise any objections
25 based on the passage of time with respect to such counts including, but not limited to, any statutes of
26 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
27 Amendment to any counts that were not time-barred as of the date of this plea agreement.

1 **D. Forfeiture**

2 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right
3 title and interest to any and all assets subject to forfeiture pursuant to 21 U.S.C. §§ 853, 881(a), and
4 881(a)(6); and 28 U.S.C. § 2461(c). Those assets include, but are not limited to, the following:

5 1. **\$30,669.00 in United States Currency.**

6 The defendant agrees that the listed assets constitutes proceeds from illegal drug trafficking in
7 violation of applicable forfeiture statutes, 21 U.S.C. §§ 853, 881(a), and 881(a)(6); and 28 U.S.C. §
8 2461(c).

9 The defendant agrees to fully assist the government in the forfeiture of the listed assets and to
10 take whatever steps are necessary to pass clear title to the United States. The defendant shall not sell,
11 transfer, convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed
12 assets.

13 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,
14 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of
15 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
16 claim in that forfeiture proceeding.

17 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
18 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses
19 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
20 and agrees to waive any claim or defense under the Eighth Amendment to the United States
21 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
22 the State of California or its subdivisions.

23 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
24 defenses or defects that may pertain to the forfeiture.

25 **III. THE GOVERNMENT'S OBLIGATIONS**

26 **A. Recommendations**

27 1. **Incarceration Range**

28 The government will recommend that the defendant be sentenced to the low end of the

1 applicable guideline range for his offense, as determined by the Court.

2 2. Acceptance of Responsibility

3 The government will recommend a two-level reduction (if the offense level is less than
4 16) or a three-level reduction (if the offense level reaches 16) in the computation of defendant's offense
5 level if he clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
6 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
7 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
8 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
9 preparation of the pre-sentence report or during the sentencing proceeding.

10 3. Mitigating Role

11 The government agrees to recommend at the time of sentencing that the defendant should receive
12 a two level reduction from his base offense level for his minor role in the conspiracy pursuant
13 18 to U.S.S.G §3B1.2(b).

14
15 B. Use of Information for Sentencing

16 The government is free to provide full and accurate information to the Court and the United
17 States Probation Office ("Probation"), including answering any inquiries made by the Court and/or
18 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,
19 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement
20 bars the government from defending on appeal or collateral review any sentence that the Court may
21 impose.

22 Further, other than as set forth above, the government agrees that any incriminating information
23 provided by the defendant during his cooperation will not be used in determining the applicable
24 guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to
25 representations made to the Court by the defendant, or on his behalf, that contradict information
26 provided by the defendant during his cooperation.

27 IV. ELEMENTS OF THE OFFENSE

28 At a trial, the government would have to prove beyond a reasonable doubt the following

1 elements of the offense(s) to which the defendant is pleading guilty:

2 As to Count Two, which charges him with possession with intent to distribute methamphetamine
3 in violation of 21 U.S.C. Section 841(a)(1):

4 1. That the defendant knowingly possessed methamphetamine; and

5 2. That the defendant intended to distribute it to another person.

6 The defendant fully understands the nature and elements of the crimes charged in the indictment
7 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
8 his attorney.

9 V. MAXIMUM SENTENCE

10 A. Maximum Penalty

11 The maximum sentence that the Court can impose is life imprisonment, a fine of \$ 5,000,000, a
12 at least a four year period of supervised release and a special assessment of \$100. The charge to which
13 defendant is pleading guilty carries a five-year mandatory minimum sentence. In addition, the defendant
14 may be ineligible for certain federal and/or state assistance and/or benefits, pursuant to 21 U.S.C. § 862.
15 By signing this plea agreement, the defendant also agrees that the Court can order the payment of
16 restitution for the full loss caused by the defendant's wrongful conduct. The defendant agrees that the
17 restitution order is not restricted to the amounts alleged in the specific counts to which the defendant is
18 pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in
19 any present or future bankruptcy proceeding any restitution imposed by the Court.

20 B. Violations of Supervised Release

21 The defendant understands that if he violates a condition of supervised release at any time during
22 the term of supervised release, the Court may revoke the term of supervised release and require the
23 defendant to serve at least five years of additional imprisonment.

24 VI. SENTENCING DETERMINATION

25 A. Statutory Authority

26 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
27 must take them into account when determining a final sentence. The defendant understands that the
28 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the

1 Sentencing Guidelines and must take them into account when determining a final sentence. The
 2 defendant further understands that the Court will consider whether there is a basis for departure from the
 3 guideline sentencing range (either above or below the guideline sentencing range) because there exists
 4 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
 5 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
 6 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
 7 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

8 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
 9 under 18 U.S.C. § 3553(a).

10 VII. WAIVERS

11 A. Waiver of Constitutional Rights

12 The defendant understands that by pleading guilty he is waiving the following constitutional
 13 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
 14 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
 15 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
 16 compelled to incriminate himself.

17 B. Waiver of Appeal and Collateral Attack

18 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
 19 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to
 20 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
 21 exceed 240 months. The defendant specifically gives up the right to appeal any order of restitution the
 22 Court may impose.

23 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
 24 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
 25 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
 26 understands that these circumstances occur infrequently and that in almost all cases this Agreement
 27 constitutes a complete waiver of all appellate rights.

28 In addition, regardless of the sentence the defendant receives, the defendant also gives up any

1 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
2 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

3 Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will
4 move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss
5 the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading
6 guilty, the government shall have the rights set forth in paragraph II.C (Defendant's Violation of Plea
7 Agreement) herein.

8 **C. Waiver of Attorneys' Fees and Costs**

9 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
10 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
11 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
12 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
13 charges previously dismissed).

14 **D. Impact of Plea on Defendant's Immigration Status**

15 Defendant recognizes that pleading guilty may have consequences with respect to his
16 immigration status if his is not a citizen of the United States. Under federal law, a broad range of crimes
17 are removable offenses, including offense(s) to which the defendant is pleading guilty. Indeed, because
18 defendant is pleading guilty to a drug felony, removal is presumptively mandatory. Removal and other
19 immigration consequences are the subject of a separate proceeding, however, and defendant understands
20 that no one, including his attorney or the district court, can predict to a certainty the effect of his
21 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
22 regardless of any immigration consequences that his plea may entail, even if the consequence is his
23 automatic removal from the United States.

24 **VIII. ENTIRE PLEA AGREEMENT**

25 Other than this plea agreement, no agreement, understanding, promise, or condition between the
26 government and the defendant exists, nor will such agreement, understanding, promise, or condition
27 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
28 counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel:

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated: 5/11/2015

Mark Coleman
Mark Coleman
Counsel for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 5/11/2015

Erik Jesus Rivera
ERIK GESUS RIVERA, Defendant

C. Court Certified Interpreter/Translator:

I declare that I am a court-certified Spanish-English interpreter/translator. On _____, I read the entire contents of the foregoing plea agreement to ERIK GESUS RIVERA, translating the document from English to Spanish.

Dated: _____

Interpreter/Translator

D. Attorney for United States:

I accept and agree to this plea agreement on behalf of the government.

Dated: May 5, 2015

BENJAMIN B. WAGNER
United States Attorney

/s/ Brian K. Delaney

BRIAN K. DELANEY

Assistant United States Attorney

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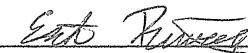
EXHIBIT "A"

Factual Basis for Plea

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

Between on or about May 1, 2013 through and including January 29, 2014, in the Eastern District of California ERIK GESUS RIVERA regularly distributed methamphetamine and heroin to various drug dealers and users in Kern County, California. During this time period RIVERA admits that he was involved in the distribution of over 15 kilograms but less than 45 kilograms of methamphetamine. The parties agree that this amount should be used to calculate RIVERA'S Guideline base offense level. On 1/29/14 at 212 Oswell, Bakersfield, CA, an apartment where RIVERA would visit and sleep from time to time, and to which he had ready access, officers found over a pound of crystal meth and ounces of heroin. RIVERA admits that the narcotics found at 212 Oswell were intended for distribution for profit.

Dated: 5/11/2015



ERIK GESUS RIVERA, Defendant