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(5/29/2013)

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

10 UNITED STATES OF AMERICA,) CASE NO. 2:12-CR-0255 GEB
11)
Plaintiff,) **PLEA AGREEMENT**
12)
v.)
13)
MATTHEW ROWAN DAVIES,)
14)
Defendant.)
15)
16)
17)

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19 I.

20 **INTRODUCTION**

21 **A. Scope of Agreement:** The Second Superseding Information
22 (hereinafter "Information") in this case charges the defendant with
23 one count of conspiracy to manufacture, distribute, and possess with
24 the intent to distribute marijuana in violation of 21 U.S.C. §§ 846,
25 841(a)(1), two counts of the manufacture of marijuana in violation of
26 21 U.S.C. § 841(a)(1), and seven counts of distribution of marijuana,
27 in violation of 21 U.S.C. § 841(a)(1). This document contains the
28 complete plea agreement between the United States Attorney's Office

1 for the Eastern District of California (the "government") and the
2 defendant regarding this case. This plea agreement is limited to the
3 United States Attorney's Office for the Eastern District of
4 California and cannot bind any other federal, state, or local
5 prosecuting, administrative, or regulatory authorities.

6 **B. Rule 11(c)(1)(C) Specific Sentence Agreement:** The
7 government and the defendant agree that the defendant should be
8 sentenced to a prison term of 5 years. Consequently, this Plea
9 Agreement is being offered to the Court pursuant to Rule 11(c)(1)(C)
10 of the Federal Rules of Criminal Procedure. Under the provisions of
11 Rule 11(c)(3), the Court may accept or reject the agreement, or may
12 defer its decision as to the acceptance or rejection until there has
13 been an opportunity to consider the presentence report. If the Court
14 accepts the Plea Agreement, the Court will inform the defendant that
15 it will not impose a sentence that exceeds 5 years. If the Court
16 rejects this Plea Agreement, the Court shall so advise the defendant,
17 allow the defendant the opportunity to withdraw his plea, and advise
18 him that if he persists in a guilty plea the disposition of the case
19 may exceed five years in prison up to the available statutory
20 maximums. Should the defendant actually withdraw his guilty plea,
21 then this agreement shall be null and void and the parties may take
22 whatever position they deem appropriate as to all issues going
23 forward.

24 **II.**

25 **DEFENDANT'S OBLIGATIONS**

26 **A. Guilty Plea:** The defendant agrees to waive his right to be
27 charged via Grand Jury Indictment and to plead guilty to all ten
28 counts contained in the Information. The defendant agrees that he is

1 in fact guilty of these charges and that the facts set forth in the
2 Factual Basis For Plea attached hereto as Exhibit A are accurate.

3 **B. Sentence Recommendation:** The defendant and his attorney will
4 recommend that the defendant be sentenced to 5 years in prison. The
5 defense is free to recommend whatever it deems appropriate as to all
6 other aspects of sentencing (e.g., fine, conditions of supervised
7 release, etc.).

8 **C. Special Assessment:** The defendant agrees to pay a special
9 assessment of \$ 100 per count for a total of \$1,000, due at the time
10 of sentencing by delivering a check or money order payable to the
11 United States District Court to the United States Probation Office
12 immediately before the sentencing hearing. The defendant understands
13 that this plea agreement is voidable by the government if he fails to
14 pay the assessment prior to that hearing.

15 **D. Financial Disclosure:** The defendant agrees to make a full
16 and complete disclosure of his assets and financial condition, and
17 will complete the United States Attorney's Office's "Authorization to
18 Release Information" and "Financial Affidavit" within five (5) weeks
19 from the entry of the defendant's change of plea. The defendant also
20 agrees to have the Court enter an order to that effect. The
21 defendant understands that the failure to complete and submit the
22 financial information form will be considered by the Court in
23 determining the appropriate fine, if any, to assess in this case.
24 Further, this plea agreement is voidable at the option of the
25 government if the defendant fails to complete truthfully and provide
26 the described documentation to the United States Attorney's office
27 within the allotted time.

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1 III.

2 THE GOVERNMENT'S OBLIGATIONS

3 **A. Agreement to Forego Other Charges:** As part of this
4 agreement, the government will forego charging certain greater drug
5 amounts levels in the charged drug offenses, which contain longer
6 mandatory minimum and longer statutory maximum prison terms. The
7 government also agrees to forego certain money laundering charges
8 that could be brought.

9 **B. Dismissals:** The government agrees to move, at the time of
10 sentencing, to dismiss without prejudice the underlying Indictment.
11 The Government also agrees not to reinstate any dismissed count
12 except as provided in paragraphs II(C) and VII(B) of this Agreement.

13 **C. Recommendations:**

14 **1. Incarceration Range:** The government will recommend
15 that the defendant be sentenced to five years in prison. The
16 government may recommend whatever it deems appropriate as to all
17 other aspects of sentencing (e.g., fine, terms of supervised release,
18 etc.). The government also agrees to recommend that the Sentencing
19 in this case be held on or after September 27, 2013, to allow the
20 defendant sufficient time to get his business affairs in order.

21 **2. Free to Argue all Facts:** The government is free to
22 provide full and accurate information to the Court and Probation,
23 including answering any inquiries made by the Court and/or Probation
24 and rebutting any inaccurate statements or arguments by the
25 defendant, his attorney, Probation, or the Court. It is specifically
26 understood that the government is free to make any and all arguments
27 and to present any factual information about the case and information
28 concerning the defendant to the Probation Officer and the Court for

1 conspiracy, the other members have also, under the law, committed the
2 crime.

3 As to Counts 2 and 3, which charge the manufacture of marijuana
4 in violation of 21 U.S.C. § 841(a)(1), the government would have to
5 prove:

6 (1) That the defendant grew, directed or otherwise knowingly
7 aided and abetted the growing of marijuana at the charged location,
8 and

9 (2) That the defendant knew that what was being grown was
10 marijuana.

11 As to Count 2 the government would also have to prove that at least
12 100 marijuana plants were grown. As to Count 3, the government would
13 have to prove that at least 50 plants were grown.

14 As to Counts 4 through 10, which charge the distribution of
15 marijuana in violation of 21 U.S.C. § 841(a)(1), the government would
16 have to prove;

17 (1) That defendant knowingly delivered, or aided, abetted,
18 counseled, or directed the delivery of marijuana to another person,
19 at the charged location,

20 (2) The defendant knew that it was marijuana that was
21 distributed.

22 As to Count 5, the government would also have to prove that at least
23 100 kilograms of marijuana were distributed. As to Counts 4 and 6,
24 the government would also have to prove that at least 50 kilograms of
25 marijuana were distributed. As to Counts 7, 8, 9, and 10, the
26 government would have to prove that more than a small amount of
27 marijuana was distributed for remuneration.

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1 V.

2 **MAXIMUM SENTENCE**

3 **A. Maximum Penalty:** The maximum sentence that the Court can
4 impose on each of Counts 1, 2, and 5 is 40 years of incarceration and
5 the minimum sentence that can be imposed is 5 years in prison. A
6 term of supervised release of between four years to life and a fine
7 of up to \$5,000,000 per count could be imposed.

8 The maximum sentence that the Court can impose as to each of
9 Counts 3, 4 and 6 is 20 years, a fine of up to \$1,000,000, and a term
10 of supervised release of from 3 years to life.

11 The maximum sentence that the Court can impose as to each of
12 Counts 7, 8, 9, and 10 is 5 years in prison, a fine of not more than
13 \$1,000,000, and a term of supervised release of from 2 years to life.

14 A statutory assessment of \$100 will also be imposed as to each
15 count for a total of \$1,000.

16 The sentences on each of these counts can be run concurrent
17 (i.e., at the same time) or consecutive (i.e., one after the other
18 separately). In addition, the defendant may be ineligible for
19 certain federal and/or state assistance and/or benefits, pursuant to
20 21 U.S.C. § 862.

21 **B. Violations of Supervised Release:** The defendant understands
22 that if he violates a condition of supervised release at any time
23 during the term of supervised release, the Court may revoke the term
24 of supervised release and require the defendant to serve up to 3
25 additional years imprisonment.

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1 VI.

2 SENTENCING DETERMINATION

3 A. **Statutory Authority:** The defendant understands that the
4 Court must consult the Federal Sentencing Guidelines (as promulgated
5 by the Sentencing Commission pursuant to the Sentencing Reform Act of
6 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as
7 modified by United States v. Booker and United States v. Fanfan,
8 543 U.S. 220 (VI), 125 S.Ct. 738 (2005)) and must take them into
9 account when determining a final sentence. The defendant understands
10 that the Court will determine a non-binding and advisory guideline
11 sentencing range for this case pursuant to the Sentencing Guidelines.
12 The defendant further understands that the Court will consider
13 whether there is a basis for departure from the guideline sentencing
14 range (either above or below the guideline sentencing range) because
15 there exists an aggravating or mitigating circumstance of a kind, or
16 to a degree, not adequately taken into consideration by the
17 Sentencing Commission in formulating the Guidelines. The defendant
18 further understands that the Court, after consultation and
19 consideration of the Sentencing Guidelines, must impose a sentence
20 that is reasonable in light of the factors set forth in 18 U.S.C.
21 § 3553(a).

22 B. **Guidelines Stipulations:** The government and the defendant
23 agree that the following is their calculation of the applicable
24 sentencing guideline variables. These calculations shall not be
25 binding on the Court or the Probation Office.

26 1. **Base Offense Level: 28** (435 kilograms of marijuana
27 produced),

28 2. **Role in the Offense Adjustment: +4** (manager or

1 supervisor of activity involving 5 or more persons),

2 **3. Maintaining a Place: +2** [USSG § 2D1.1(b)(12) - Paid
3 rent on Vicki Lane warehouse and Autumn Chase residence, and
4 controlled MediZen dispensary]

5 **4. Acceptance of Responsibility: -3**

6 **5. Criminal History:** no criminal record (Category I)

7 **6. Sentencing Range: 31/I = 108-135 months**

8 **7. Fine Range: \$15,000 to \$5,000,000.**

9 **Departure:** Both parties agree that a downward departure as to
10 the amount of incarceration to be imposed is appropriate based on
11 involvement in a marijuana distribution activity for which various
12 business licenses were obtained for the dispensaries from local
13 government entities, and where the dispensaries reported and paid
14 state sales taxes on the activity. See, U.S.S.G. § 5K2.0(a)(1)(A)
15 (departures based on ground not adequately considered by the
16 Sentencing Guidelines).

17 Both parties are free to argue § 3553(a) factors as they deem
18 appropriate within the confines of this agreement.

19 **VII.**

20 **WAIVERS**

21 **A. Waiver of Constitutional Rights:** The defendant understands
22 that by pleading guilty he is waiving the following constitutional
23 rights: (a) to plead not guilty and to persist in that plea if
24 already made; (b) to be tried by a jury; (c) to be assisted at trial
25 by an attorney, who would be appointed if necessary; (d) to subpoena
26 witnesses to testify on his behalf; (e) to confront and cross-examine
27 witnesses against him; and (f) not to be compelled to incriminate
28 himself.

1 **B. Defendant:** I have read this plea agreement including the
2 factual statements contained in Attachment A, and carefully reviewed
3 every part of it with my attorneys Patrick K. Hanly and/or Elliot
4 Peters, as needed. I understand it, and I voluntarily agree to it.
5 Further, I have consulted with my attorneys and fully understand my
6 rights with respect to the provisions of the Sentencing Guidelines
7 that may apply to my case. No other promises or inducements have
8 been made to me, other than those contained in this plea agreement.
9 In addition, no one has threatened or forced me in any way to enter
10 into this plea agreement. Finally, I am satisfied with the
11 representation of my attorneys in this case.

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13 DATED: _____ MATTHEW R. DAVIES, Defendant
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15 **C. Attorney for United States:** I accept and agree to this plea
16 agreement on behalf of the government.

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18 DATED: _____ BENJAMIN B. WAGNER
19 United States Attorney

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21 By: RICHARD J. BENDER
22 Assistant U.S. Attorney
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1 marijuana products, allocated \$1,223,795 for the cost of the
2 marijuana it sold and showed a net loss of \$54,868 after all
3 expenses. During its operation the exact amount of marijuana sold
4 is unknown but it exceeded 50 kilograms.

5 **B. CVC Dispensary (Count Five):**

6 In August of 2010, defendant Davies and codefendant Smith
7 opened a new marijuana dispensary, just outside the city limits of
8 Stockton, named Central Valley Caregivers Cooperative ("CVC") at
9 3260 Tomahawk Drive. Although they were partners in the business,
10 Codefendant Smith managed the day-to-day operation of the business.
11 CVC was a lucrative operation and averaged over \$300,000 a month in
12 gross sales through most of its existence. The dispensary operated
13 for fourteen months before closing in October of 2011. A profit &
14 loss statement obtained during the investigation shows that between
15 the year 2011, it had over \$4,500,000 in gross sales. Depending on
16 the expenses allowed, CVC showed a net profit of at least \$294,000
17 (a figure that includes the payment of \$400,000 of expenses of the
18 other dispensaries). During its operation, the exact amount of
19 marijuana sold is unknown but it exceeded 100 kilograms.

20 **C. Autumn Chase Marijuana Grow (Count Three):**

21 Sometime towards the end of 2009, defendant Davies and
22 codefendant Smith directed the growing of marijuana for the purpose
23 of supplying their Pathways dispensary. To gain experience in
24 growing marijuana, they recruited codefendant Robert Duncan to
25 operate a smaller scale indoor marijuana grow in the garage of a
26 residence located at 3115 Auburn Chase Circle in Stockton. The
27 growing of marijuana continued for approximately one year. Four
28 grow cycles were completed at that location. Seized bank account
records show that Smith and Davies both paid the lease rent on the

1 residence at different times in 2010. Robert Duncan was paid a
2 salary for growing the marijuana and was supervised by Davies and
3 Smith. Seized email communications between defendant Davies and
4 codefendants Duncan and Smith show extensive discussions between
5 them about the setting up, cultivation, and harvesting of marijuana
6 at that location. A total of four grow cycles were completed at
7 that location.

8 **D. Vicki Lane Warehouse (Count Two) and Tomahawk Warehouse:**

9 In approximately July of 2010, defendant Davies, along with
10 codefendants Smith and Duncan, starting growing marijuana on a
11 larger scale in a warehouse located at 1838 Vicki Lane in Stockton.
12 Inside the large warehouse, multiple smaller structures were built
13 in which the marijuana was actually grown (starting with 3 of these
14 smaller structures, but increasing as they went along until a total
15 of nine were in place by the summer of 2011). Codefendant Duncan
16 was put in charge of this warehouse growing operation and reported
17 to defendant Davies and codefendant Smith. The warehouse produced
18 four completed crops prior to October 4, 2011 and produced about 25
19 to 30 pounds of finished product per room on average. The finished
20 marijuana product grown at the warehouse during 2010 and 2011 was
21 sold at CVC, MediZen and other dispensaries owned/operated by
22 defendant Davies and codefendant Smith. Defendant Davies also sold
23 marijuana from their grow locations to Bay Area marijuana
24 dispensaries.

25 In approximately October of 2010, Davies and Smith started a
26 second smaller marijuana grow warehouse located in the same
27 warehouse complex as the CVC dispensary on Tomahawk Street in
28 Stockton. They provided the start-up funds and directed the

1 activity in the warehouse. This second warehouse contained three
2 grow rooms. It produced about 25 pounds of finished product per
3 room per harvest. Two harvests had been completed and the third was
4 in the process of completion before it was closed down in October of
5 2011.

6 **E. MediZen dispensary (Count Six):**

7 In February of 2011, Davies and Smith, using funds from CVC,
8 purchased a marijuana dispensary in Sacramento located at 2201
9 Northgate Blvd., Suite H, named Cherry Orchard LLC, dba East Bay
10 Health Solutions. This dispensary was qualified to apply for one of
11 the City of Sacramento issued permits for operating a marijuana
12 dispensary, which position was a valuable commodity because only
13 dispensaries that existed before a certain date were allowed to
14 apply for those permits. Davies and Smith paid the two prior owners
15 of that facility approximately \$100,000 in cash and assumed the
16 liability on past due taxes (approximately \$80,000) and past due
17 wages to employees of the facility. Davies and Smith renovated the
18 facility and changed its name to "MediZen." They controlled the
19 dispensary's operation and finances. Profit & Loss Statements of
20 Cherry Orchard LLC and MediZen obtained during the investigation
21 showed that during 2011 (after dispensary had been purchased by
22 Davies and Smith), the dispensary had \$2,000,000 in gross sales of
23 marijuana products and a net loss of about \$50,000. Over 50
24 kilograms of marijuana were sold by this dispensary during its
25 period of operation.

26 **F. R & R Wellness dispensary (Count Ten):**

27 In July of 2011, Davies and Smith also took over the management
28 and operation of R & R Wellness Collective, a marijuana dispensary

1 located at 75 Quinta Court, Sacramento, and renamed it Sacramento
2 Patients Group (SPG). The prior owner of R & R Wellness had been
3 recently arrested on California marijuana cultivation and sales
4 charges involving that same dispensary, and the facility had
5 recently been the subject of a state search warrant. From July
6 until September of 2011, Davies and Smith operated SPG, selling
7 marijuana from their grow warehouses, provided the employees to run
8 the dispensary, and provided their computer system for sales and
9 inventory control.

10 **G. Port City Health & Wellness dispensary (Count Nine):**

11 During July of 2011, defendant Davies purchased a controlling
12 interest in Port City Health and Wellness Cooperative ("Port City"),
13 one of the three applicants who had obtained a license from the City
14 of Stockton to open a marijuana dispensary within the Stockton City
15 limits. Davies paid \$100,000 cash and three \$25,000 cashiers checks
16 to the then existing business partners of Port City. He also loaned
17 Port City \$30,000 (cash). Davies had management control over the
18 business and used his trusted personnel to get the business up and
19 running. The facility opened for a few weeks in September/October
20 of 2011, before it was closed by the partners because of the
21 increase in federal law enforcement activity involving marijuana
22 dispensaries.

23 **H. River City Wellness dispensary (Count Eight):**

24 During August and September of 2011, defendant Davies and
25 codefendant Smith managed and operated another marijuana dispensary
26 called River City Wellness Collective, located at 3830 Northgate
27 Blvd., in Sacramento. Although River City Wellness was owned by
28 another person, Davies and Smith operated the facility for about a

1 two month period. They supplied the marijuana (from their
2 warehouses) that was sold by the dispensary during that time period
3 and used their employees and computer systems to manage the
4 operation of the business.

5 **I. Twelve-Hour Care dispensary (Count 7):**

6 In approximately September of 2011, defendant Davies and
7 codefendant Smith purchased Twelve-Hour Care ("THC"), another
8 permitted marijuana dispensary in Sacramento located at 6820
9 Fruitridge Road. It was managed by the defendant Davies and
10 codefendant Smith for a short period of time before it was closed
11 in October of 2011 due to increased federal law enforcement
12 activity. Defendant Davies turned the business over to one of his
13 employees who opened it back up and operated it from December of
14 2011 until March of 2012 when it shut down afer a federal search
15 warrant was executed on the premises.

16 **J. Quick & Easy Cooperative Market, Inc.:**

17 During 2010, defendant Davies and codefendant Smith opened and
18 operated a marijuana dispensary in Manteca for a brief period of
19 time (a few days), before it was shut down by the City of Manteca.
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