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

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13 v.
14 SERGEY TKACHUK,
15 Defendant.

CASE NO. 2:16-CR-00242-KJM

PLEA AGREEMENT

DATE:

TIME: 9:00 a.m.

COURT: Hon. Kimberly J. Mueller

16
17 **I. INTRODUCTION**

18 **A. Scope of Agreement**

19 The indictment in this case charges the defendant with a violation of 21 U.S.C. § 841(a)(1),
20 (Possession with Intent to Distribute Fentanyl) (Count Two), 21 U.S.C. § 841(a)(1), (Distribution of
21 Fentanyl) (Count Three), and 21 U.S.C. § 841(a)(1) (Use of a Communication Facility to Facilitate a
22 Drug Trafficking Offense (Count Five). This document contains the complete plea agreement between
23 the United States Attorney's Office for the Eastern District of California (the "government") and the
24 defendant regarding this case. This plea agreement is limited to the United States Attorney's Office for
25 the Eastern District of California and cannot bind any other federal, state, or local prosecuting,
26 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

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

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

II. DEFENDANT'S OBLIGATIONS

A. Guilty Plea

The defendant will plead guilty to Count Three in the indictment, Distribution of Fentanyl, in violation of 21 U.S.C. § 841(a)(1). The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis For Plea attached hereto as Exhibit A are accurate.

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

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

The defendant acknowledges that the crime to which he is pleading guilty is listed in 18 U.S.C. § 3143(a)(2), and agrees that he will be remanded into custody upon the entry of his plea.

B. Sentencing Recommendation

The defendant and his counsel may recommend whatever sentence they deem appropriate.

1 **C. Special Assessment**

2 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
3 a check or money order payable to the United States District Court to the United States Probation Office
4 immediately before the sentencing hearing.

5 **D. 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. One way a defendant violates the plea agreement is to commit any crime
10 or provide any statement or testimony which proves to be knowingly false, misleading, or materially
11 incomplete. Any post-plea conduct by a defendant constituting obstruction of justice will also be a
12 violation of the agreement. The determination whether the defendant has violated the plea agreement
13 shall be decided under a probable cause standard.

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

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

1 Amendment to any counts that were not time-barred as of the date of this plea agreement.

2 In addition: (1) all statements made by the defendant to the government or other designated law
3 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
4 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
5 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
6 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
7 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
8 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
9 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

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

11 **A. Dismissals**

12 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
13 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
14 count except if this agreement is voided as set forth herein, or as provided in II.D (Defendant's Violation
15 of Plea Agreement), IV.B (Guidelines Calculations), and VII.B (Waiver of Appeal) herein.

16 **B. Recommendations**

17 **1. Incarceration Range**

18 The government will recommend that the defendant be sentenced to 60 months of imprisonment.

19 **2. Acceptance of responsibility**

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

27 **C. Use of Information for Sentencing**

28 The government is free to provide full and accurate information to the Court and the United

1 States Probation Office ("Probation"), including answering any inquiries made by the Court and/or
2 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,
3 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement
4 bars the government from defending on appeal or collateral review any sentence that the Court may
5 impose.

6 **IV. ELEMENTS OF THE OFFENSE**

7 At a trial, the government would have to prove beyond a reasonable doubt the following
8 elements of the offense to which the defendant is pleading guilty:

9 As to Count Three, Distribution of Fentanyl, in violation of 21 U.S.C. § 841(a)(1):

- 10 1. The defendant knowingly distributed a controlled substance, fentanyl; and
11 2. The defendant knew that it was fentanyl, or some other federally controlled substance.

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

15 **V. MAXIMUM SENTENCE**

16 **A. Maximum penalty**

17 The maximum sentence that the Court can impose is 20 years of incarceration, a fine of
18 \$1,000,000, a period of supervised release of at least three years, and a special assessment of \$100. In
19 addition, the defendant may be ineligible for certain federal and/or state assistance and/or benefits,
20 pursuant to 21 U.S.C. § 862. By signing this plea agreement, the defendant also agrees that the Court
21 can order the payment of restitution for the full loss caused by the defendant's wrongful conduct. The
22 defendant agrees that the restitution order is not restricted to the amounts alleged in the specific counts
23 to which the defendant is pleading guilty.

24 **B. Violations of Supervised Release**

25 The defendant understands that if he violates a condition of supervised release at any time during
26 the term of supervised release, the Court may revoke the term of supervised release and require the
27 defendant to serve up to two years of additional imprisonment.
28

1 **VI. SENTENCING DETERMINATION**

2 **A. Statutory Authority**

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

13 **B. Guidelines calculations**

14 The government and the defendant agree that the following is their present best estimate of the
 15 sentencing guidelines variables. These estimates shall not be binding on the Court, the Probation Office,
 16 or the parties:

17 Base Offense Level: (20 grams of fentanyl mixture) +18 (§2D1.1)
 18 Acceptance of Responsibility: -3

19 *Estimated Criminal History Category: III*

20 The parties agree that they will not seek or argue in support of any departures from the
 21 Sentencing Guidelines under United States v. Booker, 543 U.S. 220 (2005), except as set forth in this
 22 section. The parties agree that they will seek an adjustment based on U.S.S.G. §3E.1.1 for acceptance of
 23 responsibility. The parties also agree that the government will not seek to impose an upward departure
 24 pursuant to §2D1.1(a)(2) (death resulting), but the government may seek an upward variance pursuant to
 25 § 5K2.1 (death policy statement) and 18 U.S.C. § 3553(a). The government also reserves the right to
 26 move for a departure or adjustment based on defendant's post-plea obstruction of justice (§3C1.1),
 27 and/or any downward departure.

28 The defendant is free to recommend to the Court whatever sentence he believes is appropriate

1 under 18 U.S.C. § 3553(a).

2 **VII. WAIVERS**

3 **A. Waiver of Constitutional Rights**

4 The defendant understands that by pleading guilty he is waiving the following constitutional
5 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
6 be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative
7 defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of
8 conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to
9 testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be
10 compelled to incriminate himself.

11 **B. Waiver of Appeal and Collateral Attack**

12 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
13 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to
14 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
15 exceed the maximum sentence allowed by statute. The defendant understands that this waiver includes,
16 but is not limited to, any and all constitutional and/or legal challenges to the defendant's conviction and
17 guilty plea, including arguments that the statutes to which defendant is pleading guilty are
18 unconstitutional, and any and all claims that the statement of facts attached to this agreement is
19 insufficient to support the defendant's plea of guilty. The defendant specifically gives up the right to
20 appeal any order of restitution the Court may impose.

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

26 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
27 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
28 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

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

VIII. ENTIRE PLEA AGREEMENT

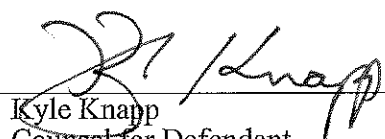
Other than this plea agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel 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: 4/15/2021


Kyle Knapp
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: 4-15-21


SERGEY I. KACHUK, Defendant

1 **C. Attorney for the United States**

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

3 Dated: April 15, 2021

PHILLIP A. TALBERT
Acting United States Attorney

5 By: 

PAUL HEMESATH
Assistant United States Attorney

EXHIBIT "A"
Factual Basis for Plea

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

On or about between March 18 and March 25, 2016, Sergey TKACHUK, obtained from another person 40 pills bearing the mark "M367." The M367 mark indicates that the pill is a "Lortab 10"—a pill manufactured by Mallinckrodt Pharmaceuticals and known for being the chemical equivalent of a "Norco." Norcos and Lortab-10s contain 10 milligrams of hydrocodone bitartrate, a controlled substance, and 325 milligrams of acetaminophen (the generic name for Tylenol). Norcos (and Lortabs) are commonly sold on the street without physician-prescriptions and are sold for five to ten dollars apiece.

The pills TKACHUK obtained and possessed were not manufactured by Mallinckrodt Pharmaceuticals. The pills were counterfeit versions of legitimate pills. Rather than containing hydrocodone bitartrate, the pills contained fentanyl and other drugs. Each pill contained 6-7 milligrams of fentanyl. TKACHUK possessed approximately 40 M367 pills that weighed approximately 20 grams. TKACHUK was unaware that the pills contained fentanyl.

On or about March 25, 2016, TKACHUK distributed 16 of the 40 pills to another person ("VICTIM-1") in exchange for \$6 per pill.

On March 28, 2016, VICTIM-1 died of a drug overdose.

TKACHUK admits that he knowingly and intentionally possessed the pills marked M367. He believed they contained controlled substances, but he did not know they were counterfeit or that they contained fentanyl. TKACHUK also admits that he possessed some of the pills with the intent to distribute them to another person. TKACHUK also admits that he distributed 16 of the pills to VICTIM-1.

Dated: _____

4-15-2021


SERGEY TKACHUK, Defendant