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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 CHAUDHRY AHMAD FAROOQ,
15 Defendant.
16

CASE NO. 1:16-cr-00127-DAD-BAm

PLEA AGREEMENT

COURT: Hon. Dale A. Drozd

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. Sections 846 and
20 841(a)(1) & (b)(1)(C) . This document contains the complete plea agreement between the United States
21 Attorney's Office for the Eastern District of California (the "government") and the defendant regarding
22 this case. This plea agreement is limited to the United States Attorney's Office for the Eastern District
23 of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory
24 authorities.

25 B. Court Not a Party

26 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
27 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
28

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

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

10 II. DEFENDANT'S OBLIGATIONS

11 A. Guilty Plea

12 The defendant will plead guilty to one count of 21 U.S.C. Section 846. The defendant agrees
13 that he is in fact guilty of this charge and that the facts set forth in the Factual Basis For Plea attached
14 hereto as Exhibit A are accurate.

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

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

24 The defendant acknowledges that the crime to which he is pleading guilty is listed in 18 U.S.C.
25 § 3143(a)(2), and agrees that he will be remanded into custody upon the entry of his plea.

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. Agreement to Cooperate**

6 The defendant agrees to cooperate fully with the government and any other federal, state, or local
7 law enforcement agency, as directed by the government. As used in this plea agreement, "cooperation"
8 requires the defendant: (1) to respond truthfully and completely to all questions, whether in interviews,
9 in correspondence, telephone conversations, before a grand jury, or at any trial or other court
10 proceeding; (2) to attend all meetings, grand jury sessions, trials, and other proceedings at which the
11 defendant's presence is requested by the government or compelled by subpoena or court order; (3) to
12 produce voluntarily any and all documents, records, or other tangible evidence requested by the
13 government; (4) not to participate in any criminal activity while cooperating with the government; and
14 (5) to disclose to the government the existence and status of all money, property, or assets, of any kind,
15 derived from or acquired as a result of, or used to facilitate the commission of, the defendant's illegal
16 activities or the illegal activities of any conspirators.

17 **D. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

18 If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,
19 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The
20 government will no longer be bound by its representations to the defendant concerning the limits on
21 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the
22 plea agreement is to commit any crime or provide any statement or testimony which proves to be
23 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant
24 constituting obstruction of justice will also be a violation of the agreement. The determination whether
25 the defendant has violated the plea agreement shall be decided under a probable cause standard.

26 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
27 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded
28 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file

1 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
2 be subject to prosecution for any federal criminal violation of which the government has knowledge,
3 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
4 options is solely in the discretion of the United States Attorney's Office.

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

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

22 **E. Forfeiture**

23 The defendant voluntarily stipulates and agrees that as part of his sentence the Court may,
24 pursuant to Fed. R. Crim. P. 32.2(b), order a forfeiture money judgment in an amount up to \$196,284.97,
25 less any forfeited funds.

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

1 claim in that forfeiture proceeding.

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

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

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 paragraphs III.B.3
15 (Cooperation), II.E (Defendant's Violation of Plea Agreement), VI.B (Guidelines Calculations), and
16 VII.B (Waiver of Appeal) herein.

17 **B. Recommendations**

18 **1. Incarceration Range**

19 The government will recommend that the defendant be sentenced to the low end of the
20 applicable guideline range for his offense, as determined by the Court.

21 **2. Acceptance of Responsibility**

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

1 3. Reduction of Sentence for Cooperation

2 The government agrees to recommend at the time of sentencing that the defendant's
3 sentence of imprisonment be reduced by up to 50% of the applicable guideline sentence if he provides
4 substantial assistance to the government, pursuant to U.S.S.G. § 5K1.1. The defendant understands that
5 he must comply with paragraph II.D (Agreement to Cooperate) and not violate this plea agreement, as
6 set forth in paragraph II.E (Defendant's Violation of Plea Agreement) herein. The defendant
7 understands that it is within the sole and exclusive discretion of the government to determine whether
8 the defendant has provided substantial assistance.

9 The defendant understands that the government may recommend a reduction in his
10 sentence of less than 50% or no reduction at all; depending upon the level of assistance the government
11 determines that the defendant has provided.

12 The defendant further understands that a motion pursuant to U.S.S.G. § 5K1.1 is only a
13 recommendation and is not binding on the Court, that this plea agreement confers no right upon the
14 defendant to require that the government make a § 5K1.1 motion, and that this plea agreement confers
15 no remedy upon the defendant in the event that the government declines to make a § 5K1.1 motion. In
16 particular, the defendant agrees not to try to file a motion to withdraw his guilty plea based on the fact
17 that the government decides not to recommend a sentence reduction or recommends a sentence
18 reduction less than the defendant thinks is appropriate.

19 If the government determines that the defendant has provided further cooperation within
20 one year following his sentencing, the government may move for a further reduction of his sentence
21 pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

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

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

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

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(s) to which the defendant is pleading guilty:

9 As to Count One, 21 U.S.C. Section 846:

- 10 1. Beginning on a date no later than November 2015 and continuing through in or about
11 August 2016, there was an agreement between two or more persons to distribute and
12 possess with intent to distribute a controlled substance, to wit: heroin, a Schedule I
13 controlled substance; and
14 2. The defendant became a member of the conspiracy knowing of at least one of its objects
15 and intending to help accomplish it.

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

19 **V. MAXIMUM SENTENCE**

20 **A. Maximum Penalty**

21 The maximum sentence that the Court can impose is 20 years of incarceration, a fine of
22 \$1,000,000, a mandatory three year period of supervised release and a special assessment of \$100. The
23 charge to which defendant is pleading guilty carries a ten-year mandatory minimum sentence, absent a
24 motion by the government for reduction pursuant to 18 U.S.C. § 3553(e). In addition, the defendant
25 may be ineligible for certain federal and/or state assistance and/or benefits, pursuant to 21 U.S.C. § 862.
26 By signing this plea agreement, the defendant also agrees that the Court can order the payment of
27 restitution for the full loss caused by the defendant's wrongful conduct. The defendant agrees that the
28 restitution order is not restricted to the amounts alleged in the specific counts to which the defendant is

1 pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in
2 any present or future bankruptcy proceeding any restitution imposed by the Court.

3 **B. Violations of Supervised Release**

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

7 **VI. SENTENCING DETERMINATION**

8 **A. Statutory Authority**

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

19 **B. Guideline Calculations**

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

23 The government and the defendant agree that there is no material dispute as to the following
24 sentencing guidelines variables and therefore stipulate to the following: a base level offense of twenty-
25 six (26) pursuant to USSG 2D1.1(c)(7).

26 The parties agree that they will not seek or argue in support of any other specific offense
27 characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"),
28 or cross-references, except that the government may move for a departure or adjustment based on

1 defendant's post-plea obstruction of justice (§3C1.1) or defendant's cooperation (§5K1.1). Both parties
2 agree not to move for, or argue in support of, any departure from the Sentencing Guidelines, or any
3 deviance or variance from the Sentencing Guidelines under United States v. Booker, 543 U.S. 220
4 (2005).

5 The defendant also agrees that the application of the United States Sentencing Guidelines to his
6 case results in a reasonable sentence, and that the defendant will not request that the Court apply the
7 sentencing factors under 18 U.S.C. § 3553 to arrive at a different sentence than that called for under the
8 Sentencing Guidelines' advisory guideline range as determined by the Court. The defendant
9 acknowledges that if the defendant requests or suggests in any manner a different sentence than what is
10 called for under the advisory guideline range as determined by the Court, the plea agreement is voidable
11 at the option of the government. The government, in its sole discretion, may withdraw from the plea
12 agreement and continue with its prosecution of the defendant as if the parties had never entered into this
13 plea agreement.

14 VII. WAIVERS

15 A. Waiver of Constitutional Rights

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

21 B. Waiver of Appeal and Collateral Attack

22 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
23 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to
24 appeal the guilty plea, conviction, and the sentence imposed in this case. The defendant specifically
25 gives up the right to appeal any order of restitution or forfeiture the Court may impose.

26 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
27 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
28 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant

1 understands that these circumstances occur infrequently and that in almost all cases this Agreement
2 constitutes a complete waiver of all appellate rights.

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

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

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

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

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

18 Defendant recognizes that pleading guilty may have consequences with respect to his
19 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
20 are removable offenses, including offense(s) to which the defendant is pleading guilty. The defendant
21 and his counsel have discussed the fact that the charge to which the defendant is pleading guilty is an
22 aggravated felony, or a crime that is likely to be determined to be an aggravated felony under 8 USC §
23 1101(a)(43), and that while there may be arguments that defendant can raise in immigration proceedings
24 to avoid or delay removal, it is virtually certain that defendant will be removed. Removal and other
25 immigration consequences are the subject of a separate proceeding, however, and defendant understands
26 that no one, including his attorney or the district court, can predict to a certainty the effect of his
27 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
28 regardless of any immigration consequences that his plea may entail, even if the consequence is his

1 automatic removal from the United States.

2 **VIII. ENTIRE PLEA AGREEMENT**

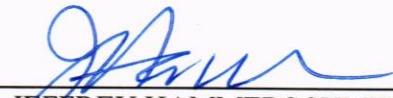
3 Other than this plea agreement, no agreement, understanding, promise, or condition between the
4 government and the defendant exists, nor will such agreement, understanding, promise, or condition
5 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
6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

7 **IX. APPROVALS AND SIGNATURES**

8 **A. Defense Counsel:**

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

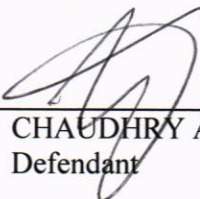
12
13 Dated: 12-19-16


14 **JEFFREY HAMMERSCHMIDT**
Counsel for Defendant

15 **B. Defendant:**

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

22
23 Dated: 12-19-16


24 **CHAUDHRY AHMAD FAROOQ,**
Defendant

1 C. Attorney for United States:

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

3
4 Dated: 1/11/17

PHILLIP A. TALBERT
United States Attorney

6
7 GRANT B. RABENN
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:

Beginning no later than in or around November 2015, and continuing to in or around August 2016, in the County of Fresno, within the State and Eastern District of California and elsewhere, including the County of Kings, within the State and Eastern District of New York, the defendant conspired with co-defendant Abdullah Almashwali to distribute heroin, a Schedule I controlled substance. Under the monikor "DarkApollo" and with the participation of co-defendant Abdullah Almashwali, the defendant sold approximately 636.5 grams of heroin on the darkweb marketplace AlphaBay in exchange for at least \$145,807 in Bitcoin.