

**FILED**  
JUL 20 2018  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

Case No. 18CR1745BAS

11 Plaintiff,

12 v.

PLEA AGREEMENT

13 ADOLPH GARZA,

14 Defendant.

15 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
16 AMERICA, through its counsel, Adam Braverman, United States Attorney,  
17 and Sherri Walker Hobson, Assistant United States Attorney, and  
18 defendant Adolph Garza, with the advice and consent of Ezekiel Cortez,  
19 counsel for defendant, as follows:

20 **I**

21 **THE PLEA**

22 Defendant agrees to plead guilty to the information after waiving  
23 indictment, charging defendant with conspiracy to distribute controlled  
24 substances by internet, in violation of Title 21, United States Code,  
25 Sections 841(h) and 846.

26 Defendant agrees further that, following entry of defendant's  
27 guilty plea, the Government need not hold or preserve any evidence  
28 seized in connection with this case. With respect to any controlled

Plea Agreement

Def. Initials *[Signature]*

1 substance seized in connection with this case, defendant agrees that,  
2 following entry of defendant's guilty plea, the Government need not  
3 preserve, and may destroy, the controlled substance thirty (30) days  
4 after the Government has provided defendant with the laboratory analysis  
5 report. If defendant believes that additional testing is needed,  
6 defendant will arrange for, and complete, such testing within the above-  
7 referenced thirty (30) day period, unless that period is extended by  
8 joint written agreement between the parties or by order of the Court,  
9 in which case the Government shall preserve the controlled substance  
10 for the agreed-upon or judicially mandated period. Furthermore, if the  
11 court has issued a preservation order in connection with any seized  
12 evidence, the defendant agrees to jointly request that the Court lift  
13 or revoke the preservation order following entry of defendant's guilty  
14 plea.

15 II

16 NATURE OF THE OFFENSE

17 A. ELEMENTS EXPLAINED

18 Defendant understands that the offense to which defendant is  
19 pleading guilty has the following elements:

- 20 1. *The defendant agreed with others to deliver, distribute*  
21 *and dispense controlled substances, to wit tablets of a*  
22 *mixture or substance containing a detectable amount of*  
23 *("MDMA"), 3,4-Methylenedioxymethamphetamine, commonly*  
24 *known as "ecstasy", a Schedule I Controlled Substance;*  
25 2. *The Defendant did so by means of the internet, in a*  
26 *matter not authorized by law.*

1 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

2 Defendant has fully discussed the facts of this case with defense  
3 counsel. Defendant has committed each of the elements of the crime,  
4 and admits that there is a factual basis for this guilty plea. The  
5 following facts are true and undisputed:

6 1. That on or about multiple occasions between August 2016  
7 to March 7, 2018, defendant ordered tablets or powder  
8 containing MDMA to wit: 3,4-  
9 Methylenedioxymethamphetamine, commonly known as  
10 "ecstasy", a Schedule I Controlled Substance, by using  
11 the dark web internet.

12 2. On or about August 12, 2016, defendant ordered 11 grams  
13 of MDMA; on August 16, 2016, defendant ordered 103  
14 tablets of MDMA; on August 25, 2016, defendant ordered  
15 11 grams of MDMA; on April 13, 2017, defendant ordered  
16 101 tables of MDMA; on April 14, 2017, defendant ordered  
17 100 tablets of MDMA; on April 23, 2017, defendant ordered  
18 32 grams of ketamine; on April 25, 2017, defendant  
19 ordered 125 tables of MDMA; on May 7, 2017, defendant  
20 ordered 43 grams of ketamine; on May 9, 2017, defendant  
21 ordered 100 pills of MDMA; on July 27, 2017, defendant  
22 ordered 33 grasmf of ketamine; on October 14, 2017,  
23 defendant ordered 55 grams of MDMA; on December 13, 2017,  
24 defendant ordered 100 tablets of MDMA; on December 19,  
25 2017, defendant ordered 241 tablets of MDMA; on February  
26 7, 2018, defendant delivered 75.5 grams of MDMA and 25  
27 orange pills of MDMA; on February 12, 2018, defendant  
28 ordered approximately 125 pills of MDMA.

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3. Defendant ordered these items referenced above from other coconspirators for delivery to his residence or his mail box location by using the dark web internet in a manner not authorized by law. ~~Defendant was also a vendor on the dark web, selling various controlled substances for delivery by mail.~~ EEC 

4. On March 7, 2018, at his residence, defendant also possessed 405 grams of MDMA, 57 grams of cocaine, ketamine, amphetamine, and other controlled substances.

5. The parties agree that for sentencing purposes that 918 grams of MDMA, 679 tablets of MDMA, and other controlled substances, were involved in the conspiracy.

III

PENALTIES

Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:

- A. maximum of 20 years in custody;
- B. a maximum \$250,000 fine;
- C. a mandatory special assessment of \$100 per count; and
- D. a term of supervised release of 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison, upon any such revocation, all or part of the statutory maximum term of supervised release for the offense that resulted in such term of supervised release.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

- A. Continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
- B. A speedy and public trial by jury;
- C. The assistance of counsel at all stages of trial;
- D. Confront and cross-examine adverse witnesses;
- E. Testify and present evidence and to have witnesses testify on behalf of defendant; and,
- F. Not testify or have any adverse inferences drawn from the failure to testify.
- G. Defendant knowingly and voluntarily waives any rights and defenses defendant may have under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution to the forfeiture of property in this proceeding or any related civil proceeding.

V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The Government represents that any information establishing the factual innocence of defendant known to the undersigned prosecutor in this case has been turned over to defendant. The Government will continue to provide such information establishing the factual innocence of defendant.

Defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if defendant

1 raised an affirmative defense, the Government would be required to  
2 provide information in its possession that supports such a defense.  
3 Defendant acknowledges, however, that by pleading guilty defendant will  
4 not be provided this information, if any, and defendant also waives the  
5 right to this information. Finally, defendant agrees not to attempt to  
6 withdraw the guilty plea or to file a collateral attack based on the  
7 existence of this information.

8 **VI**

9 **DEFENDANT'S REPRESENTATION THAT GUILTY**  
10 **PLEA IS KNOWING AND VOLUNTARY**

11 Defendant represents that:

- 12 A. Defendant has had a full opportunity to discuss all the facts  
13 and circumstances of this case with defense counsel and has  
14 a clear understanding of the charges and the consequences of  
15 this plea. Defendant understands that, by pleading guilty,  
16 defendant may be giving up, and rendered ineligible to  
17 receive, valuable government benefits and civic rights, such  
18 as the right to vote, the right to possess a firearm, the  
19 right to hold office, and the right to serve on a jury.  
20 Defendant further understands that the conviction in this  
21 case may subject defendant to various collateral  
22 consequences, including but not limited to deportation,  
23 removal or other adverse immigration consequences; revocation  
24 of probation, parole, or supervised release in another case;  
25 debarment from government contracting; and suspension or  
26 revocation of a professional license, none of which will serve  
27 as grounds to withdraw defendant's guilty plea.
- 28 B. No one has made any promises or offered any rewards in  
return for this guilty plea, other than those contained in  
this agreement or otherwise disclosed to the Court.
- C. No one has threatened defendant or defendant's family to  
induce this guilty plea.
- D. Defendant is pleading guilty because in truth and in fact  
defendant is guilty and for no other reason.



VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF CALIFORNIA**

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by the defendant.

VIII

**APPLICABILITY OF SENTENCING GUIDELINES**

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and the Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

IX



**SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

**X**

**PARTIES' SENTENCING RECOMMENDATIONS**

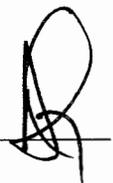
**A. SENTENCING GUIDELINE CALCULATIONS**

Although the parties understand that the Guidelines are only advisory and just one of the factors the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures:

**1. Base Offense Level [§ 2D1.1] 26**

(This is based on the following calculations:

- 679 tablets conversion is 250mg/pill so  $679 \times 250 = 169,750$  mgs (or 169.75 grams of MDMA)
- 918 grams of MDMA
- $918 \text{ grams} + 169.75 \text{ grams} = 1,087.75 \text{ grams of MDMA}$



- To convert to marijuana equivalent: 1 gram of MDMA = 500 grams of marijuana, so 1,087.75 grams of MDMA = 543,875 grams of marijuana = **543.87 kilograms of marijuana**

**2. Acceptance of Responsibility [§ 3E1.1] -3**

**3. Departure for Combination of Factors/Early Disposition (5K2.0) -2**

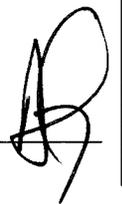
B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.2 above, the Government will not be obligated to recommend any adjustment for Acceptance of Responsibility if defendant engages in conduct inconsistent with acceptance of responsibility including, but not limited to, the following:

1. Fails to truthfully admit a complete factual basis as stated in the plea at the time the plea is entered, or falsely denies, or makes a statement inconsistent with, the factual basis set forth in this agreement;
2. Falsely denies prior criminal conduct or convictions;
3. Is untruthful with the Government, the Court or probation officer; or
4. Materially breaches this plea agreement in any way.

C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING THOSE UNDER 18 U.S.C. § 3553

The parties agree that defendant may request or recommend additional downward adjustments, departures, including criminal history departures under USSG § 4A1.3, or sentence reductions under 18 U.S.C. § 3553. The Government will oppose any such downward adjustments, departures and sentence reductions not set forth in Section X, paragraph A above.



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1 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

2 The parties have **no** agreement as to defendant's Criminal History  
3 Category:

4 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

5 The parties agree that the facts in the "factual basis" paragraph  
6 of this agreement are true, and may be considered as "relevant conduct"  
7 under USSG § 1B1.3 and as the nature and circumstances of the offense  
8 under 18 U.S.C. § 3553(a)(1).

9 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

10 The parties agree that the Government will recommend that defendant  
11 be sentenced to the low end of the of the advisory guideline range as  
12 calculated by the Government pursuant to this agreement.

13 G. SPECIAL ASSESSMENT/FINE

14 1. Special Assessment.

15 The parties will jointly recommend that defendant pay a special  
16 assessment in the amount of \$100 to be paid forthwith at time of  
17 sentencing. The special assessment shall be paid through the office of  
18 the Clerk of the District Court by bank or cashier's check or money  
19 order made payable to the "Clerk, United States District Court."

20 2. Fine.

21 The United States will recommend a fine, in addition to the \$9,800  
22 cash found at defendant's residence.

23 H. SUPERVISED RELEASE

24 If the Court imposes a term of supervised release, defendant agrees  
25 that he will not later seek to reduce or terminate early the term of  
26 supervised release until he has served at least 2/3 of his term of  
27 supervised release and has fully paid and satisfied any special



1 assessments, fine, criminal forfeiture judgment and restitution  
2 judgment.

3 **XI**

4 **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

5 In exchange for the Government's concessions in this plea  
6 agreement, defendant waives, to the full extent of the law, any right  
7 to appeal or to collaterally attack the conviction and any lawful  
8 restitution order, except a post-conviction collateral attack based on  
9 a claim of ineffective assistance of counsel. The defendant also  
10 waives, to the full extent of the law, any right to appeal or to  
11 collaterally attack the sentence, except a post-conviction collateral  
12 attack based on a claim of ineffective assistance of counsel, unless  
13 the Court imposes a custodial sentence above the high end of the  
14 guideline range (which, if USSG 5G1.1(b) applies, will be the  
15 statutorily required mandatory minimum sentence) recommended by the  
16 Government pursuant to this agreement at the time of sentencing,  
17 excluding any recommended variance. If the custodial sentence is  
18 greater than the high end of that range, defendant may appeal, but the  
19 Government will be free to support on appeal the sentence actually  
20 imposed. If defendant believes the Government's recommendation is not  
21 in accord with this plea agreement, defendant will object at the time  
22 of sentencing; otherwise the objection will be deemed waived.

23 If at any time defendant files a notice of appeal, appeals or  
24 collaterally attacks the conviction or sentence in violation of this  
25 plea agreement, said violation shall be a material breach of this  
26 agreement as further defined below.

1 XII

2 BREACH OF THE PLEA AGREEMENT

3 Defendant acknowledges, understands and agrees that if defendant  
4 violates or fails to perform any of defendant's obligations under this  
5 agreement, such violation or failure to perform may constitute a  
6 material breach of this agreement.

7 Defendant acknowledges, understands and agrees further that the  
8 following non-exhaustive list of conduct by defendant unquestionably  
9 constitutes a material breach of this plea agreement:

- 10 1. Failing to plead guilty pursuant to this agreement;
- 11 2. Failing to fully accept responsibility as established  
12 in Section X, paragraph B, above;
- 13 3. Failing to appear in court;
- 14 4. Attempting to withdraw the plea;
- 15 5. Failing to abide by any lawful court order related to  
16 this case;
- 17 6. Appealing or collaterally attacking the sentence or  
18 conviction in violation of Section XI of this plea  
19 agreement; or
- 20 7. Engaging in additional criminal conduct from the time  
21 of arrest until the time of sentencing.

22 In the event of defendant's material breach of this plea agreement,  
23 defendant will not be able to enforce any of its provisions, and the  
24 Government will be relieved of all its obligations under this plea  
25 agreement. For example, the Government may pursue any charges including  
26 those that were dismissed, promised to be dismissed, or not filed as a  
27 result of this agreement (defendant agrees that any statute of  
28 limitations relating to such charges is tolled as of the date of this

1 agreement; defendant also waives any double jeopardy defense to such  
2 charges). In addition, the Government may move to set aside defendant's  
3 guilty plea. Defendant may not withdraw the guilty plea based on the  
4 Government's pursuit of remedies for defendant's breach.

5 Additionally, defendant agrees that in the event of defendant's  
6 material breach of this plea agreement: (i) any statements made by  
7 defendant, under oath, at the guilty plea hearing (before either a  
8 Magistrate Judge or a District Judge); (ii) the stipulated factual basis  
9 statement in this agreement; and (iii) any evidence derived from such  
10 statements, are admissible against defendant in any prosecution of, or  
11 any action against, defendant. This includes the prosecution of the  
12 charge(s) that is the subject of this plea agreement or any charge(s)  
13 that the prosecution agreed to dismiss or not file as part of this  
14 agreement, but later pursues because of a material breach by the  
15 defendant. Additionally, defendant knowingly, voluntarily, and  
16 intelligently waives any argument under the United States Constitution,  
17 any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of  
18 the Federal Rules of Criminal Procedure, and/or any other federal rule,  
19 that the statements or any evidence derived from any statements should  
20 be suppressed or are inadmissible.

21 **XIII**

22 **ENTIRE AGREEMENT**

23 This plea agreement embodies the entire agreement between the  
24 parties and supersedes any other agreement, written or oral.

25 **XIV**

26 **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

27 No modification of this plea agreement shall be effective unless  
28 in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation. This is defendant's independent opinion, and his [her] counsel did not advise him [her] about what to say in this regard.

7/10/2018

DATED

ADAM BRAVERMAN  
United States Attorney

SHERRI WALKER HOBSON  
Assistant U.S. Attorney

6-25-18

DATED

EZEKIEL CORTEZ  
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE ARE TRUE.

7/8/18

DATED

ADOLPH GARZA  
Defendant