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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

Case No. 18CR5463JLS

11 Plaintiff,

12 v.

PLEA AGREEMENT

13 APRIL SPRING KELLY,

14 Defendant.

15 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
16 AMERICA, through its counsel, ROBERT S. BREWER, JR., United States
17 Attorney, and SHERRI WALKER HOBSON, Assistant United States Attorney,
18 and Defendant APRIL SPRING KELLY, with the advice and consent of Robert
19 Garcia, counsel for Defendant, as follows:

20 **I**


21 **THE PLEA**

22 Defendant agrees to plead guilty to Counts 1, 2, 3 and 4 of the
23 Superseding Information charging Defendant with:

24 Count 1

25 On or about November 30, 2018, within the Southern District of
26 California, defendant APRIL SPRING KELLY did knowingly and
27 intentionally import 500 grams and more of a mixture and substance
28 containing a detectable amount of methamphetamine, a Schedule II
Controlled Substance, to wit: 16.47 kilograms (36.24 pounds), into the

Plea Agreement

Def. Initials 

1 United States from a place outside thereof; in violation of Title 21,
2 United States Code, Sections 952 and 960.

3
4 Count 2

5 On or about November 30, 2018, within the Southern District of
6 California, defendant APRIL SPRING KELLY did knowingly and
7 intentionally import 5 kilograms of a mixture and substance containing
8 a detectable amount of cocaine, a Schedule II Controlled Substance, to
9 wit: 17.19 kilograms (37.83 pounds), into the United States from a place
10 outside thereof; in violation of Title 21, United States Code, Sections
11 952 and 960.

12 Count 3

13 On or about November 30, 2018, within the Southern District of
14 California, defendant APRIL SPRING KELLY did knowingly and
15 intentionally import 400 grams and more of a mixture and substance
16 containing a detectable amount of fentanyl (N-phenyl-N-[1-(2-
17 phenylethyl)-4-piperidinyl] propanamide), a Schedule II Controlled
18 Substance, to wit: approximately 5.7 kilograms (11.99 pounds), into the
19 United States from a place outside thereof; in violation of Title 21,
20 United States Code, Sections 952 and 960.

21 Count 4

22 Beginning in February 2018, and continuing up to October 2018,
23 within the Southern District of California, and elsewhere, defendant
24 APRIL SPRING KELLY did knowingly and intentionally conspire with others
25 to distribute 400 grams and more of a mixture or substance containing
26 a detectable amount of fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-
27 piperidinyl] propanamide), a Schedule II Controlled Substance, to wit:
28 approximately 450,000 fentanyl pills, in violation of Title 21, United
States Code, Sections 846 and 841(a)(1).

Defendant agrees that, following entry of Defendant's guilty plea,
the Government need not hold or preserve any evidence seized in
connection with this case. For any controlled substance seized in
connection with this case, Defendant agrees that, following entry of
Defendant's guilty plea, the Government may destroy the controlled
substance 30 days after the Government has provided Defendant with the
laboratory analysis report. If Defendant believes that additional
testing is needed, Defendant will arrange for and complete such testing

1 within that 30-day period, unless that period is extended by joint
2 written agreement or Court order, in which case the Government shall
3 preserve the controlled substance for the agreed-upon or judicially
4 mandated period. If the court has issued a preservation order in
5 connection with any seized evidence, Defendant will request that the
6 Court lift or revoke the preservation order following entry of
7 Defendant's guilty plea.

8 **II**

9 **NATURE OF THE OFFENSE**

10 **A. ELEMENTS EXPLAINED**

11 The offenses to which Defendant are pleading guilty have the
12 following elements as to **Counts 1, 2 and 3:**

13 1. *The defendant knowingly brought controlled substances*
14 *(fentanyl, methamphetamine & cocaine) into the United States;*

15 2. *The defendant knew that it was fentanyl, methamphetamine*
16 *and cocaine, or some other prohibited drug.*

17 3. *The offenses involved approximately 16.47 kilograms*
18 *(36.24 pounds) of methamphetamine (**Count 1**), a Schedule II Controlled*
19 *Substance; approximately 17.19 kilograms (37.83 pounds) of cocaine, a*
20 *Schedule II Controlled Substance (**Count 2**); and 5.4 kilograms (11.99*
21 *pounds) of fentanyl, a Scheduled II Controlled Substance (**Count 3**).*

22 The offense to which Defendant is pleading guilty has the
23 following elements as to **Count 4:**

24 1. *Beginning on or about February 2018 and continuing to*
25 *October 2018, there was an agreement between two or more*
26 *persons to distribute fentanyl;*

1 2. Defendant joined in the agreement knowing of its purpose
2 and intending to help accomplish that purpose.

3 3. In addition, for purposes of sentencing, the Government
4 would have to prove beyond a reasonable doubt that the
5 amount of fentanyl involved in the conspiracy offense was
6 at least 400 grams and more of a mixture and substance
7 containing a detectable amount of fentanyl (N-phenyl-N-[1-
8 (2-phenylethyl)-4-piperidinyl] propanamide), and that
9 federally controlled substance and quantity (1) fell within
10 the scope of the defendant's agreement with co-conspirators
11 and (2) was reasonably foreseeable and in furtherance of
12 the conspiracy.

13 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

14 Defendant has fully discussed the facts of this case with defense
15 counsel. Defendant has committed each element of the crime and admits
16 that there is a factual basis for this guilty plea. The following facts
17 are true and undisputed:

18 Counts 1, 2, 3 (Importation of Controlled Substances)

19 1. On or about November 30, 2018, defendant knowingly and
20 intentionally drove her vehicle (Volkswagen Jetta) from
21 Mexico into the United States through the San Ysidro
22 Port of Entry.

23 2. At the time defendant drove her vehicle into the United
24 States on November 30, 2018, defendant knew that there
25 were controlled substances - fentanyl, methamphetamine
26 and cocaine - concealed in her vehicle.

1 3. Defendant intended to deliver the above-referenced
2 controlled substances to another person in San Diego
3 County.

4 4. The weight/quantities of controlled substances concealed
5 in her vehicle on November 30, 2018, were 16.47 kilograms
6 (36.24 pounds) of methamphetamine (**Count 1**), a Schedule
7 II Controlled Substance; approximately 17.19 kilograms
8 (37.83 pounds) of cocaine, a Schedule II Controlled
9 Substance (**Count 2**); and 5.4 kilograms (11.99 pounds) of
10 fentanyl, a Scheduled II Controlled Substance (**Count 3**).

11 **Count 4 (Conspiracy To Distribute Fentanyl)**

12 1. Beginning in February 2018, and continuing up to October
13 2018, within the Southern District of California, and
14 elsewhere, defendant agreed with an individual (F.R.) to
15 distribute thousands of fentanyl pills from Mexico into
16 the United States through the San Diego Ports of Entry
17 (San Ysidro Port of Entry and Otay Mesa Port of Entry)
18 and through the Nogales Port of Entry.

19 2. Defendant knowingly and intentionally joined in the
20 conspiracy, knowing that the object was to distribute
21 fentanyl pills from Mexico into the United States for
22 distribution to other persons in San Diego and Phoenix.

23 3. During the charged conspiracy and at the direction of
24 F.R., a coconspirator in Tijuana, Mexico, defendant
25 imported approximately 450,000 fentanyl pills to others
26 by smuggling the pills into the United States through
27 the Ports of Entry. Defendant thereafter distributed
28

1 E. Testify and present evidence and to have witnesses testify on
2 behalf of Defendant; and,

3 F. Not testify or have any adverse inferences drawn from the
4 failure to testify.

5 V

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

8 Any information establishing the factual innocence of Defendant
9 known to the undersigned prosecutor in this case has been turned over
10 to Defendant. The Government will continue to provide such information
11 establishing the factual innocence of Defendant.

12 If this case proceeded to trial, the Government would be required
13 to provide impeachment information for its witnesses. In addition, if
14 Defendant raised an affirmative defense, the Government would be
15 required to provide information in its possession that supports such a
16 defense. By pleading guilty Defendant will not be provided this
17 information, if any, and Defendant waives any right to this information.
18 Defendant will not attempt to withdraw the guilty plea or to file a
19 collateral attack based on the existence of this information.

20 VI

21 **DEFENDANT'S REPRESENTATION THAT GUILTY**
22 **PLEA IS KNOWING AND VOLUNTARY**

23 Defendant represents that:

24 A. Defendant has had a full opportunity to discuss all the facts
25 and circumstances of this case with defense counsel and has
26 a clear understanding of the charges and the consequences of
27 this plea. By pleading guilty, Defendant may be giving up,
28 and rendered ineligible to receive, valuable government
benefits and civic rights, such as the right to vote, the
right to possess a firearm, the right to hold office, and the
right to serve on a jury. The conviction in this case may
subject Defendant to various collateral consequences,
including but not limited to revocation of probation, parole,

1 or supervised release in another case; debarment from
2 government contracting; and suspension or revocation of a
3 professional license, none of which can serve as grounds to
4 withdraw Defendant's guilty plea.

5 B. No one has made any promises or offered any rewards in return
6 for this guilty plea, other than those contained in this
7 agreement or otherwise disclosed to the Court.

8 C. No one has threatened Defendant or Defendant's family to
9 induce this guilty plea.

10 D. Defendant is pleading guilty because Defendant is guilty and
11 for no other reason.

12 **VII**

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

15 This plea agreement is limited to the United States Attorney's
16 Office for the Southern District of California, and cannot bind any
17 other authorities in any type of matter, although the Government will
18 bring this plea agreement to the attention of other authorities if
19 requested by Defendant.

20 **VIII**

21 **APPLICABILITY OF SENTENCING GUIDELINES**

22 The sentence imposed will be based on the factors set forth in 18
23 U.S.C. § 3553(a). In imposing the sentence, the sentencing judge must
24 consult the United States Sentencing Guidelines (Guidelines) and take
25 them into account. Defendant has discussed the Guidelines with defense
26 counsel and understands that the Guidelines are only advisory, not
27 mandatory. The Court may impose a sentence more severe or less severe
28 than otherwise applicable under the Guidelines, up to the maximum in
the statute of conviction. The sentence cannot be determined until a
presentence report is prepared by the U.S. Probation Office and defense
counsel and the Government have an opportunity to review and challenge

1 the presentence report. Nothing in this plea agreement limits the
2 Government's duty to provide complete and accurate facts to the district
3 court and the U.S. Probation Office.

4 IX

5 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

6 This plea agreement is made pursuant to Federal Rule of Criminal
7 Procedure 11(c)(1)(B). The sentence is within the sole discretion of
8 the sentencing judge who may impose the maximum sentence provided by
9 statute. It is uncertain at this time what Defendant's sentence will
10 be. The Government has not made and will not make any representation
11 about what sentence Defendant will receive. Any estimate of the probable
12 sentence by defense counsel is not a promise and is not binding on the
13 Court. Any recommendation by the Government at sentencing also is not
14 binding on the Court. If the sentencing judge does not follow any of
15 the parties' sentencing recommendations, Defendant will not withdraw
16 the plea.

17 X

18 PARTIES' SENTENCING RECOMMENDATIONS

19 A. SENTENCING GUIDELINE CALCULATIONS

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

- 24
- | | | |
|----|--|------|
| 25 | 1. Base Offense Level [§§ 2D1.1] | 38* |
| 26 | 2. Importation of Methamphetamine
[§ 2D1.1(b)(5)] | +2 |
| 27 | 3. Safety Valve (if applicable)
[§§ 2D1.1(b)(17) and 5C1.2] | -2** |
| 28 | 4. Acceptance of Responsibility [§ 3E1.1] | -3 |

1 *If Defendant is determined to be a career offender pursuant to
2 USSG § 4B1.1(a), the applicable base offense level shall be determined
3 pursuant to USSG § 4B1.1(b). Furthermore, Defendant will be ineligible
4 for any role reduction.

5 **If defendant truthfully discloses to the Government all
6 information and evidence the defendant has concerning the offense and
7 relevant conduct, and if defendant otherwise qualifies for the "safety
8 valve" in § 5C1.2, the Government will recommend a two-level reduction
9 under § 2D1.1(b)(17) and relief from any statutory mandatory minimum
10 sentence pursuant to § 5C1.2. Defendant understands that, if he/she
11 does not qualify under § 5C1.2, defendant may be subject to a statutory
12 mandatory minimum sentence.

13 B. ACCEPTANCE OF RESPONSIBILITY

14 Despite paragraph A.2 above, the Government need not recommend an
15 adjustment for Acceptance of Responsibility if Defendant engages in
16 conduct inconsistent with acceptance of responsibility including, but
17 not limited to, the following:

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

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

1 Defendant may request or recommend additional downward
2 adjustments, departures, or variances from the Sentencing Guidelines
3 under 18 U.S.C. § 3553. The Government will oppose any downward
4 adjustments, departures, or variances not set forth in Section X,
5 paragraph A above.

6 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

7 There is no agreement regarding defendant's criminal history
8 category.

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

10 The facts in the "factual basis" paragraph of this agreement are
11 true and may be considered as "relevant conduct" under USSG § 1B1.3 and
12 as the nature and circumstances of the offense under 18 U.S.C.
13 § 3553(a)(1).

14 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

15 The Government will recommend that Defendant be sentenced to the
16 low end of the advisory guideline range, or the mandatory minimum
17 whichever is greater, recommended by the Government at sentencing,

18 G. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

19 1. Special Assessment

20 The parties will jointly recommend that Defendant pay a special
21 assessment in the amount of \$400 to be paid forthwith at time of
22 sentencing. Special assessments shall be paid through the office of the
23 Clerk of the District Court by bank or cashier's check or money order
24 made payable to the "Clerk, United States District Court."
25
26
27
28

1 such claims shall be deemed waived (that is, deliberately not raised
2 despite awareness that the claim could be raised), cannot later be made
3 to any court, and if later made to a court, shall constitute a breach
4 of this agreement.

5 Defendant breaches this agreement if Defendant violates or fails
6 to perform any obligation under this agreement. The following are non-
7 exhaustive examples of acts constituting a breach:

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

19 If Defendant breaches this plea agreement, Defendant will not be
20 able to enforce any provisions, and the Government will be relieved of
21 all its obligations under this plea agreement. For example, the
22 Government may proceed to sentencing but recommend a different sentence
23 than what it agreed to recommend above. Or the Government may pursue
24 any charges including those that were dismissed, promised to be
25 dismissed, or not filed as a result of this agreement (Defendant agrees
26 that any statute of limitations relating to such charges is tolled
27 indefinitely as of the date all parties have signed this agreement;
28

1 DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

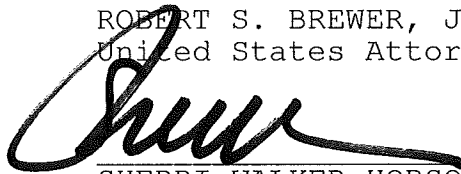
2 By signing this agreement, Defendant certifies that Defendant has
3 read it (or that it has been read to Defendant in Defendant's native
4 language). Defendant has discussed the terms of this agreement with
5 defense counsel and fully understands its meaning and effect.

6 **XV**

7 DEFENDANT SATISFIED WITH COUNSEL

8 Defendant has consulted with counsel and is satisfied with
9 counsel's representation. This is Defendant's independent opinion, and
10 Defendant's counsel did not advise Defendant about what to say in this
11 regard.

12 ROBERT S. BREWER, JR.
United States Attorney



13
14 SHERRI WALKER HOBSON
Assistant U.S. Attorney

13 7/15/2019

14 DATED

15
16 
ROBERT GARCIA
Defense Counsel

15 June 27, 2019

16 DATED

17
18 **IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER
19 PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE
20 ARE TRUE.**



21 APRIL SPRING KELLY
Defendant

20 June 27, 2019

21 DATED

22 Approved by:

23 email

24 JOSHUA C. MELLOR
25 Assistant U.S. Attorney