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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 SEBASTIAN GUTHERY,
14 Defendant.

Case No. 23-CR-179-TWR

PLEA AGREEMENT

15 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
16 AMERICA, through its counsel, Randy S. Grossman, United States Attorney,
17 and Melanie K. Pierson, Assistant United States Attorney, and Defendant
18 SEBASTIAN GUTHERY, with the advice and consent of Andrew Young and
19 Charles LaBella, counsel for Defendant, as follows:

20 I

21 THE PLEA

22 Defendant agrees to waive Indictment and the Statute of
23 Limitations, and plead guilty to a Superseding Information charging
24 Defendant with:

25 *Entering and introducing, and attempting to enter and*
26 *introduce, into the commerce of the United States, any*
27 *imported merchandise, to wit: kratom (Mitragyna speciosa), by*
28 *means of any fraudulent or false invoice, declaration,*
affidavit, letter, paper, and by means of any false statement,
written or verbal, and by means of any false or fraudulent
practice, and makes any false statement in any declaration

Plea Agreement

Def. Initials SG
23CR179-TWR

1 without reasonable cause to believe the truth of such
2 statement, and procures the making of any such false statement
3 as to any matter material thereto without reasonable cause to
believe the truth of such statement, on or about May 16, 2018,
within the Southern District of California, in violation of
18 U.S.C. §§ 542 and 2.

4 The Government agrees to (1) move to dismiss the remaining charges
5 without prejudice when Defendant is sentenced, and (2) not prosecute
6 Defendant thereafter on such dismissed charges, and (3) agrees not to
7 prosecute Defendant on any criminal tax charges for the tax years 2014-
8 2018, unless Defendant breaches the plea agreement or the guilty plea
9 entered pursuant to this plea agreement is set aside for any reason. If
10 Defendant breaches this agreement or the guilty plea is set aside,
11 section XII below shall apply.

12 This plea agreement is part of a "package" disposition as set forth
13 in Section VI.E below

14 II

15 NATURE OF THE OFFENSE

16 A. ELEMENTS EXPLAINED

17 The offense to which Defendant is pleading guilty has the following
18 elements:

- 19 1. The defendant entered or introduced, or attempted to enter
20 or introduce, into the commerce of the United States any
21 imported merchandise;
- 22 2. The defendant did so by means of any material false or
23 fraudulent invoice, declaration, affidavit, letter, paper,
24 statement, or practice; and,
- 25 3. The defendant did so without reasonable cause to believe
26 the truth of such invoice, declaration, affidavit, letter,
27 paper, statement, or practice.

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 element of the crime and admits
4 that there is a factual basis for this guilty plea. The following facts
5 are true and undisputed:

- 6 1. At all times relevant herein, defendant Sebastian Guthery
7 owned and operated a company known as Nine2Five, LLC,
8 located in Carlsbad, California, which employed at least
9 10 employees, and was engaged in the business importing
10 and selling kratom (*Mitragyna speciosa*).
- 11 2. On or about May 16, 2018, in Carlsbad, California,
12 defendant Sebastian Guthery caused the importation and
13 introduction into commerce of 9,800 kg of kratom from
14 Indonesia to the United States through a consignee named
15 Middleton Central, LLC.
- 16 3. At that time, Sebastian Guthery caused the importation of
17 the kratom by means of a materially false and fraudulent
18 invoice which declared it to be Flora Food Botanical Soil
19 Conditioner (*Eucheuma spinosum*)/fertilizer.
- 20 4. At that time, Sebastian Guthery did so without reasonable
21 cause to believe the truth of such invoice, declaration,
22 and statement.
- 23 5. The invoice submitted with the entry package stated that
24 the value of the goods was \$61,728.00.

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27 **III**

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PENALTIES

The crime to which Defendant is pleading guilty carries the following penalties:

- A. a maximum 2 years in prison;
- B. a maximum \$250,000 fine;
- C. a mandatory special assessment of \$100 per count; and
- D. a term of supervised release of up to 1 year. Failure to comply with any condition of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison, upon revocation, all or part of the statutory maximum term of supervised release.

IV
DEFENDANT'S WAIVER OF TRIAL RIGHTS AND
UNDERSTANDING OF CONSEQUENCES

This guilty plea waives Defendant's right at trial 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;
- 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.

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1 D. Defendant is pleading guilty because Defendant is guilty and
2 for no other reason.

3 E. The disposition contemplated by this agreement is part of a
4 "package" disposition with codefendant NINE2FIVE, LLC. If any
5 defendant in the package fails to perform or breaches any
6 part of their agreement, no defendant can withdraw their
7 guilty plea, but the Government is relieved from and not bound
8 by any terms in any agreements in the package.

9 **VII**

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

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

17 **VIII**

18 **APPLICABILITY OF SENTENCING GUIDELINES**

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

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SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

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

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PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the Guidelines are only advisory and just one factor 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 [USSGS 2T3.1] | 12 |
| 2. | Role [§3B1.1(a)] | +4 |
| 3. | Acceptance of Responsibility [§ 3E1.1] | -3 |

B. ACCEPTANCE OF RESPONSIBILITY

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

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- 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. Breaches this plea agreement in any way.

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

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

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

The parties have **no** agreement as to Defendant's Criminal History Category.

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

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

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F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

1 The Government will recommend that Defendant be sentenced to no
2 more than twelve months and one day.

3 G. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

4 1. Special Assessment

5 The parties will jointly recommend that Defendant pay a special
6 assessment in the amount of \$100.00 per felony count of conviction to
7 be paid forthwith at time of sentencing. Special assessments shall be
8 paid through the office of the Clerk of the District Court by bank or
9 cashier's check or money order made payable to the "Clerk, United States
10 District Court."

11 2. Fine

12 The parties will not recommend imposition of a fine due to
13 Defendant's limited financial prospects and because the cost of
14 collection, even taking into account the Inmate Responsibility Program,
15 likely would exceed the amounts that could reasonably be expected to be
16 collected, and the need for the defendant's limited financial resources
17 to be applied to his tax liability.

18 H. SUPERVISED RELEASE

19 If the Court imposes a term of supervised release, Defendant will
20 not seek to reduce or terminate early the term of supervised release
21 until Defendant has served at least 2/3 of the term of supervised
22 release and has fully paid and satisfied any special assessments, fine,
23 criminal forfeiture judgment, and restitution judgment. If the United
24 States recommends a term of supervised release, the government will not
25 seek a travel restriction on the defendant during such period of
26 release.

27 **XI**

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DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Defendant waives (gives up) all rights to appeal and to collaterally attack every aspect of the conviction and sentence. This waiver includes, but is not limited to, any argument that the statute of conviction or Defendant's prosecution is unconstitutional and any argument that the facts of this case do not constitute the crime charged. The only exceptions are 1) Defendant may appeal a custodial sentence above the high end of the guideline range recommended by the Government at sentencing (if USSG § 5G1.1(b) applies, the high end of the range will be the statutorily required mandatory minimum sentence), and 2) Defendant may collaterally attack the conviction or sentence on the basis that Defendant received ineffective assistance of counsel. If Defendant appeals, the Government may support on appeal the sentence or restitution order actually imposed.

XII

BREACH OF THE PLEA AGREEMENT

Defendant and Defendant's attorney know the terms of this agreement and shall raise, before the sentencing hearing is complete, any claim that the Government has not complied with this agreement. Otherwise, such claims shall be deemed waived (that is, deliberately not raised despite awareness that the claim could be raised), cannot later be made to any court, and if later made to a court, shall constitute a breach of this agreement.

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

- 1. Failing to plead guilty pursuant to this agreement;

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

11 If Defendant breaches this plea agreement, Defendant will not be
12 able to enforce any provisions, and the Government will be relieved of
13 all its obligations under this plea agreement. For example, the
14 Government may proceed to sentencing but recommend a different sentence
15 than what it agreed to recommend above. Or the Government may pursue
16 any charges including those that were dismissed, promised to be
17 dismissed, or not filed as a result of this agreement (Defendant agrees
18 that any statute of limitations relating to such charges is tolled
19 indefinitely as of the date all parties have signed this agreement;
20 Defendant also waives any double jeopardy defense to such charges). In
21 addition, the Government may move to set aside Defendant's guilty plea.
22 Defendant may not withdraw the guilty plea based on the Government's
23 pursuit of remedies for Defendant's breach.

24 Additionally, if Defendant breaches this plea agreement: (i) any
25 statements made by Defendant, under oath, at the guilty plea hearing
26 (before either a Magistrate Judge or a District Judge); (ii) the factual
27 basis statement in Section II.B in this agreement; and (iii) any

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1 evidence derived from such statements, are admissible against Defendant
2 in any prosecution of, or any action against, Defendant. This includes
3 the prosecution of the charge(s) that is the subject of this plea
4 agreement or any charge(s) that the prosecution agreed to dismiss or
5 not file as part of this agreement, but later pursues because of a
6 breach by the Defendant. Additionally, Defendant knowingly,
7 voluntarily, and intelligently waives any argument that the statements
8 and any evidence derived from the statements should be suppressed,
9 cannot be used by the Government, or are inadmissible under the United
10 States Constitution, any statute, Rule 410 of the Federal Rules of
11 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, and
12 any other federal rule.

13 **XIII**

14 **CONTENTS AND MODIFICATION OF AGREEMENT**

15 This plea agreement embodies the entire agreement between the
16 parties and supersedes any other agreement, written or oral. No
17 modification of this plea agreement shall be effective unless in writing
18 signed by all parties.

19 **XIV**

20 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

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

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27 **XV**

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DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and Defendant's counsel did not advise Defendant about what to say in this regard. Defendant waives, to the full extent of the law, any potential conflict that could arise from the representation by his counsel of both him and his co-defendant NINE2FIVE, LLC.

RANDY S. GROSSMAN
United States Attorney



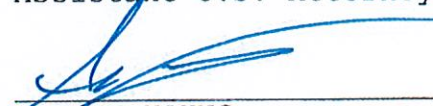
MELANIE K. PIERSON
Assistant U.S. Attorney

July 6, 2023

DATED

7/6/23

DATED


ANDREW YOUNG
CHARLES LA BELLA
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.

7/6/23

DATED


SEBASTIAN GUTHERY
Defendant