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

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 JENNIFER DONABEDIAN,
16 Defendant.

CASE NO. 1:15-CR-00104 AWI SKO
MEMORANDUM OF PLEA AGREEMENT
PURSUANT TO RULE 11(C) OF THE FEDERAL
RULES OF CRIMINAL PROCEDURE
Date:
Time:
Courtroom: #2, 8th Floor
Honorable Anthony W. Ishii

17 Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, the United States of America,
18 by and through BENJAMIN B. WAGNER, the United States Attorney for the Eastern District of
19 California, and MELANIE L. ALSWORTH, Assistant United States Attorney, and the defendant,
20 JENNIFER DONABEDIAN, and her attorney, ERIC FOGDERUDE, have agreed as follows:

21 1. Charges.

22 The defendant acknowledges that she has been charged by Superseding Information, 1:15-CR-
23 00104 AWI SKO, in the Eastern District of California with a violation of Title 18, United States Code,
24 Section 4, Misprision of a Felony.
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1 2. Agreements by Defendant.

2 (a) The defendant agrees that this plea agreement shall be filed with the court and become
3 part of the record in the case.

4 (b) The defendant agrees to enter a plea of guilty to the Superseding Information which
5 charges her with misprision of a felony. The defendant agrees that she is in fact guilty of this charge and
6 that the facts set forth in the factual basis of this agreement are true and accurate. Defendant further
7 agrees to admit the forfeiture allegation contained in the indictment.

8 (c) Stipulations Affecting Guideline Calculation:

9 The defendant stipulates and agrees that there is no material dispute as to the following
10 sentencing guidelines variables and therefore stipulates to the following:

- 11 1. Base Offense Level. The defendant stipulates and agrees that the base offense
12 level for misprision of a felony, based upon an underlying offense of conspiracy
13 to distribute and/or possess with intent to distribute 40 kg of marijuana is 9
14 pursuant to U.S.S.G. § 2X4.1(a).
- 15 2. Acceptance of Responsibility. The offense level should be reduced by 2 levels for
16 acceptance of responsibility under U.S.S.G. § 3E1.1.
- 17 3. Total Offense Level. The total offense level is 7.
- 18 4. Advisory Guideline Range. The guideline range for offense level, criminal
19 history category I, is 0-6 months imprisonment.

20 (d) Defendant stipulates and agrees that a sentence of 12 months probation is reasonable,
21 that it reflects the actual seriousness of the offense conduct, including conduct underlying a potential
22 charge that was not pursued in the case, and that it takes into consideration the factors set forth in 18
23 U.S.C. § 3553.

24 (e) Forfeiture: The defendant agrees to forfeit to the United States voluntarily and
25 immediately all of her right, title, and interest to any and all assets seized in connection to the criminal
26 charges and events giving rise to the Indictment.

27 Defendant agrees that any assets seized or found to be connected to the criminal events and
28 charges giving rise to the Indictment constitute property subject to forfeiture pursuant to 21 U.S.C.

1 § 853.

2 Defendant agrees to fully assist the government in the forfeiture of any seized assets or assets
3 later determined to be forfeitable pursuant to the Indictment and to take whatever steps are necessary to
4 pass clear title to the United States. Defendant shall not sell, transfer, convey, or otherwise dispose of
5 any assets found to be connected to the criminal events charged in the Indictment.

6 Defendant agrees not to file any claim to any of the seized property in any civil proceeding,
7 administrative or judicial, which may be initiated. Defendant agrees to waive her right to notice of any
8 forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
9 claim in that forfeiture proceeding.

10 The defendant waives the notice provisions of Fed. R. Crim. P. 7(c)(2) and 32.2(a), waives oral
11 pronouncement of forfeiture at the time of sentencing and any defects in such pronouncement that
12 pertain to forfeiture, and waives any defenses to forfeiture, including any defense predicated on the Ex
13 Post Facto, Double Jeopardy, and Excessive Fines Clauses of the United States Constitution. The
14 defendant knowingly and voluntarily waives any right to jury trial in any criminal or civil forfeiture
15 proceeding.

16 (f) The defendant understands and agrees that the court is not a party to this agreement, that
17 sentencing is a matter solely within the discretion of the court, the court is under no obligation to accept
18 any recommendations made by the government, and the court may in its discretion impose any sentence
19 it deems appropriate up to and including the statutory maximum stated in this Plea Agreement. If the
20 court should impose any sentence up to the maximum established by the statute, the defendant cannot,
21 for that reason alone, withdraw her guilty plea, and she will remain bound to fulfill all of the obligations
22 under this Agreement. The defendant understands that neither the prosecutor, defense counsel, nor the
23 court can make a binding prediction or promise regarding the sentence she will receive.

24 (g) The defendant is aware that Title 18, United States Code, Section 3742 affords a
25 defendant the right to appeal the sentence imposed. Acknowledging this, the defendant knowingly
26 waives the right to appeal her conviction or any sentence (or the manner in which that sentence was
27 determined) which is in accordance with the maximum provided in Title 21, United States Code,
28 Sections 841(a)(1) and (b)(1)(C), on the grounds set forth in Title 18, United States Code, Section 3742

1 or on any ground whatever, in exchange for the concessions made by the United States in this plea
2 agreement. The defendant also waives her right to challenge her conviction, sentence or the manner in
3 which it was determined in any post-conviction attack, including but not limited to a motion brought
4 under Title 18, United States Code, Section 3582 and/or Title 28, United States Code, Sections 2241 or
5 2255, except for non-waivable claims.

6 (h) If the defendant's conviction on the count to which she is pleading guilty is ever vacated
7 at the defendant's request, or her sentence is ever reduced at her request, or if the defendant violates the
8 Plea Agreement, she shall thereafter be subject to prosecution for any federal criminal violation of which
9 the government has knowledge, including but not limited to perjury, false statements, and obstruction of
10 justice. Because disclosures pursuant to this Agreement will constitute a waiver of the Fifth
11 Amendment privilege against compulsory self-incrimination, any such prosecution may be premised on
12 statements and/or information provided by the defendant. The government shall have the right (1) to
13 prosecute the defendant on the count to which she pleaded guilty; and (2) to file any new charges that
14 would otherwise be barred by this Agreement. The decision to pursue any or all of these options will be
15 solely within the discretion of the United States Attorney's Office. By signing this agreement, the
16 defendant agrees to waive any objections, motions, and defenses she might have to the government's
17 decision, including Double Jeopardy. In particular, she agrees not to raise any objections based on the
18 passage of time with respect to such counts including, but not limited to, any statutes of limitation or any
19 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

20 If it is determined that the defendant has violated any provision of this Agreement or if the
21 defendant successfully moves to withdraw her plea: (1) all statements made by the defendant to the
22 government or other designated law enforcement agents, or any testimony given by the defendant before
23 a grand jury or other tribunal, whether before or after this Agreement, shall be admissible in evidence in
24 any criminal, civil, or administrative proceedings hereafter brought against the defendant; and (2) the
25 defendant shall assert no claim under the United States Constitution, any statute, the Federal Rules of
26 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that
27 statements made by the defendant before or after this Agreement, or any leads derived therefrom, should
28 be suppressed. By signing this Agreement, the defendant waives any and all rights in the foregoing

1 respects.

2 (i) The defendant agrees to waive all rights under the “Hyde Amendment”, Section 617, P.L.
3 105-119 (Nov. 26, 1997), to recover attorneys’ fees or other litigation expenses in connection with the
4 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
5 (including without limitation any charges to be dismissed pursuant to this Agreement and any charges
6 previously dismissed).

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

17 (k) The defendant understands that pleading guilty may have consequences with respect to
18 her immigration status if she is not a citizen of the United States. Under federal law, a broad range of
19 crimes are removable offenses, including the offense to which defendant is pleading guilty. Indeed,
20 because defendant is pleading guilty to a controlled substance offense, removal is presumptively
21 mandatory. Removal and other immigration consequences are the subject of a separate proceeding,
22 however, and defendant understands that no one, including her attorney or the district court, can predict
23 to a certainty the effect of her conviction on her immigration status. Defendant nevertheless affirms that
24 she wants to plead guilty regardless of any immigration consequences that her plea may entail, even if
25 the consequence is her automatic removal from the United States.

26 3. Agreements by the Government.

27 (a) Stipulations Affecting Guideline Calculation:

28 The government stipulates and agrees that there is no material dispute as to the following

1 sentencing guidelines variables and therefore stipulates to the following:

- 2 1. Base Offense Level. The government stipulates and agrees that the base offense
3 level for misprision of a felony, based upon an underlying offense of conspiracy
4 to distribute and/or possess with intent to distribute 40 kg of marijuana is 9
5 pursuant to U.S.S.G. § 2X4.1(a).
- 6 2. Acceptance of Responsibility. The offense level should be reduced by 2 levels for
7 acceptance of responsibility under U.S.S.G. § 3E1.1.
- 8 3. Total Offense Level. The total offense level is 7.
- 9 4. Advisory Guideline Range. The guideline range for offense level 7, criminal
10 history category I, is 0-6 months imprisonment.

11 (b) The government will recommend a sentence of 12 months probation. The government
12 agrees that a sentence of 12 months probation is reasonable, that it reflects the actual seriousness of the
13 offense conduct, including conduct underlying a potential charge that was not pursued in the case, and
14 that it takes into consideration the factors set forth in 18 U.S.C. § 3553.

15 (c) If the defendant enters a plea of guilty to the Superseding Information, the government
16 agrees to dismiss the indictment against the defendant at the time of sentencing.

17 4. Nature, Elements, Possible Defenses, and Factual Basis.

18 (a) The defendant has read the charge contained in the Superseding Information, and that
19 charge has been fully explained to her by her attorney.

20 (b) The defendant fully understands the nature and elements of the crime with which she has
21 been charged, together with the possible defenses, and has discussed them with her attorney. To convict
22 the defendant of the crime of conspiracy to distribute and possess with intent to distribute marijuana, the
23 government would have to establish the following beyond a reasonable doubt:

24 First: that a federal felony, namely, conspiracy to distribute and possess with
25 intent to distribute marijuana, was committed, as charged in Count Twelve
26 of the indictment;

27 Second: that defendant had knowledge of the commission of the felony;

28 Third: that defendant failed to notify an authority as soon as possible; and

1 Fourth: that defendant did an affirmative act, as charged, to conceal the crime.

2 The elements of conspiracy to distribute and possess with intent to distribute marijuana are as
3 follows:

4 First: that beginning at a time unknown but no later than July 14, 2014 and
5 ending on or about March 26, 2015, there was an agreement between
6 defendant and at least one other person to knowingly and intentionally
7 distribute and possess with intent to distribute marijuana; and

8 Second: that defendant joined in the agreement knowing of its purpose and
9 intending to help accomplish that purpose.

10 The elements of distribution of marijuana are as follows:

11 First: the defendant knowingly distributed a controlled substance, to wit:
12 marijuana; and

13 Second: at all times, defendant knew that marijuana is a controlled substance.

14 The elements of possession with intent to distribute marijuana are as follows:

15 First: the defendant knowingly possessed marijuana;

16 Second: the defendant possessed marijuana with the intent to distribute it to
17 another person; and

18 Third: at all times, defendant knew that marijuana is a controlled substance

19 (c) The defendant will plead guilty because she is in fact guilty of the crime set forth in the
20 Superseding Information. The defendant also agrees that the following are the facts of this case,
21 although she acknowledges that, as to other facts, the parties may disagree:

22 Beginning at a time unknown but not later than December 11, 2014, and
23 continuing to no later than March 26, 2015, in the County of Fresno, State
24 and Eastern District of California, the defendant, Iran Dennis Foster, and
at least one other person entered into an agreement to distribute and/or
possess with intent to distribute marijuana.

25 Specifically, Iran Dennis Foster ("Denny" Foster), defendant's cohabitant,
26 sold marijuana as his primary source of income for a period of years. One
27 of Denny Foster's sources of supply was Ricky Reynolds, a resident of
Shasta County, California. Denny Foster would regularly travel to Shasta
28 County, California to acquire marijuana from Reynolds, return to Fresno,
California with the marijuana, then distribute the marijuana to customers
in Fresno, California and Albuquerque, New Mexico. Defendant knew of
Denny Foster's marijuana trafficking activities as described above.

1 Defendant knew that Denny Foster's primary source of income was from
2 marijuana distribution. Defendant traveled with Denny Foster to Shasta
3 County, California on multiple occasions to acquire marijuana. Defendant
4 knew that Denny Foster would conceal the marijuana in a cooler inside the
5 trunk of the vehicle to prevent detection by law enforcement in the event
6 of a traffic stop. Defendant also permitted Denny Foster use of her vehicle
7 to make these trips in her absence. Defendant knew that Denny Foster
8 stored marijuana at their residence in Fresno, California, and that he
9 frequently distributed marijuana from the residence. Defendant assisted
10 Denny Foster in weighing and distributing marijuana from the residence in
11 his absence.

7 The defendant concealed these crimes by permitting Denny Foster to make
8 cash deposits to her checking accounts, which she would then transfer to
9 another account by either wire transfer or check deposit, thereby
10 concealing the source of the cash. Defendant knew that the cash deposits
11 were the proceeds of Denny Foster's drug transactions (marijuana and
12 other controlled substances). Defendant also concealed the crime by
13 allowing marijuana to be hidden in her residence before its sale.

11 Defendant knew that the total weight of marijuana trafficked by Denny
12 Foster was at least 40 kilograms.

13 At all times, defendant knew that marijuana is a controlled substance.

14 Defendant failed to notify any law enforcement or other authority that
15 Denny Foster was committing any crime, including a federal felony.

15 5. Potential Sentence.

16 The defendant understands that an advisory sentencing guideline range for this case will be
17 determined by the Court. The defendant further understands that the Court will impose a sentence
18 within that guideline range, unless the Court finds that there is a basis for departure (either above or
19 below the range) because there exists an aggravating or mitigating circumstance of a kind, or to a
20 degree, not adequately taken into consideration by the Sentencing Commission in formulating the
21 guidelines.

23 The parties agree, however, that they will not seek or argue in support of any other specific
24 offense characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of
25 Responsibility") or cross-references, except that the government may move for a departure or
26 adjustment based on defendant's post-plea obstruction of justice (§ 3C1.1) should the defendant engage
27 in such conduct. Both parties agree not to move for, or argue in support of, any departure from the
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1 Sentencing Guidelines, or any deviance or variance from the Sentencing Guidelines under *United States*
2 *v. Booker*, 543 U.S. 220 (2005).

3 The defendant also agrees that the application of the United States Sentencing Guidelines to her
4 case results in a reasonable sentence, and that the defendant will not request that the Court apply the
5 sentencing factors under 18 U.S.C. § 3553 to arrive at a different sentence than that called for under the
6 Sentencing Guidelines' advisory guideline range as determined by the Court. The defendant may argue
7 for a split sentence under U.S.S.G. § 5C1.1 if the applicable guideline range, as determined by the Court,
8 is in Zone A, B, or C.

9
10 The following is the maximum potential sentence which the defendant faces:

11 (a) Imprisonment.

12 Mandatory Minimum: None.

13 Maximum: 3 years.

14 (b) Fine. Maximum: \$250,000.00.

15 (c) Fine and/or Imprisonment.

16 (d) Supervised Release.

17 Maximum: 2 years.

18 (Should the defendant violate the conditions of supervised release, he could be
19 subject to a term of imprisonment up to the term of supervised release imposed.)

20 (e) Penalty Assessment. Mandatory: One Hundred Dollars (\$100.00).).

21 (f) Pursuant to 21 U.S.C. § 862, the defendant may become temporarily or
22 permanently ineligible for any and all federal benefits¹ and, pursuant to 21 U.S.C.

23 § 862a, shall be ineligible for the following government benefits:

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27 ¹The term "federal benefits" does not include any retirement, welfare, Social Security, health,
28 disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which
payments or services are required for eligibility, but refers to the issuance of any grant, contract, loan,
professional license, or commercial license provided by an agency or appropriated funds of the United
States. 21 U.S.C. § 862(d)(1).

- 1 (1) assistance under any State program funded under part A of title IV of the
2 Social Security Act (42 U.S.C. § 601 et seq.);
3 (2) benefits under the food stamp program (as defined in section 3h of the
4 Food Stamp Act) (7 U.S.C. § 2012(h)) or any State program carried out
5 under the Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.).

6 6. Waiver of Rights.

7 The defendant understands that by pleading guilty she surrenders certain rights, including the
8 following:

9 (a) The defendant is entitled to the continued representation of an attorney at any trial in this
10 case and, if the defendant is unable to afford an attorney, one would be appointed by the Court.

11 (b) If the defendant persisted in a plea of not guilty to the charge(s) against her, she would
12 have the right to a public and speedy trial and the assistance of an attorney at that trial. If the defendant
13 could not afford an attorney, one would be appointed for her. The trial could be either a jury trial or a
14 trial by a judge sitting without a jury. The defendant has a right to a jury trial. However, in order that
15 the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge
16 must all agree that the trial be conducted by the judge without a jury.

17 (c) If the trial were a jury trial, the jury would be composed of twelve lay persons selected at
18 random. The defendant and her attorney would have a say in who the jurors would be by removing
19 prospective jurors for cause where actual bias or other disqualification is shown, or without cause by
20 exercising peremptory challenges. The jury would have to agree unanimously before it could return a
21 verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed
22 innocent and that it could not convict her unless, after hearing all the evidence, it was persuaded of her
23 guilt beyond a reasonable doubt.

24 (d) If the trial were held before a judge without a jury, the judge would find the facts and
25 determine, after hearing all the evidence, whether or not she was persuaded of the defendant's guilt
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1 beyond a reasonable doubt.

2 (e) At a trial, whether by a jury or a judge, the government would be required to present its
3 witnesses and other evidence against the defendant. The defendant would be able to confront those
4 government witnesses and her attorney would be able to cross-examine them. In turn, the defendant
5 could present witnesses and other evidence on her own behalf. If the witnesses for the defendant would
6 not appear voluntarily, she could require their attendance through the subpoena power of the court.
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8 (f) At a trial, the defendant would have a privilege against self-incrimination so that she
9 could decline to testify, and no inference of guilt could be drawn from this refusal to testify.

10 The defendant understands that by pleading guilty she is waiving all of the rights set forth above
11 and the defendant's attorney has explained those rights to her and the consequences of her waiver of
12 those rights.

13 7. Entire Agreement.

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

18 8. Court Not a Party.

19 The defendant understands that the United States Probation Office is not a party to this
20 Agreement and will conduct an independent investigation of the defendant's activities and her
21 background and prepare a presentence report which it will submit to the Court as its own sentencing
22 recommendation. In addition, the government will fully apprise the Probation Office, as well as the
23 Court of the full and true nature, scope and extent of the defendant's criminal activities concerning the
24 charge to which the defendant is entering a plea of guilty, including activities which may not have been
25 charged in the Indictment, or were the subject of dismissed counts.

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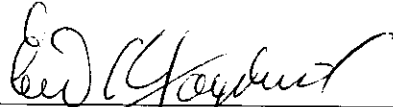
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9. Approvals and Signatures

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 with my client's decision to plead guilty as set forth in this plea agreement.

DATED: July 28, 2016


ERIC FOGDERUDE
Attorney 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: July 28, 2016


JENNIFER DONABEDIAN, Defendant

C. Attorney for the United States

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

DATED:

PHILLIP A. TALBERT
ACTING UNITED STATES ATTORNEY

By: 
MELANIE L. ALSWORTH
ASSISTANT UNITED STATES ATTORNEY