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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DARREN FITZGERALD MCGHEE,

17 Defendant.

No. CR 19-787-CJC

PLEA AGREEMENT FOR DEFENDANT
DARREN FITZGERALD MCGHEE

18
19 1. This constitutes the plea agreement between Darren
20 Fitzgerald McGhee ("defendant") and the United States Attorney's
21 Office for the Central District of California (the "USAO") in the
22 above-captioned case. This agreement is limited to the USAO and
23 cannot bind any other federal, state, local, or foreign prosecuting,
24 enforcement, administrative, or regulatory authorities.

25 DEFENDANT'S OBLIGATIONS

26 2. Defendant agrees to:

27 a. At the earliest opportunity requested by the USAO and
28 provided by the Court, appear and plead guilty to the single-count of

1 the indictment in United States v. Darren Fitzgerald McGhee, CR No.
2 19-787-CJC, which charges defendant with possession with intent to
3 distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1),
4 (b)(1)(A)(ii)(II).

5 b. Not contest facts agreed to in this agreement.

6 c. Abide by all agreements regarding sentencing contained
7 in this agreement.

8 d. Agree that all court appearances, including his change
9 of plea hearing and sentencing hearing, may proceed by video-
10 teleconference ("VTC") or telephone, if VTC is not reasonably
11 available, so long as such appearances are authorized by General
12 Order 20-097 or another order, rule, or statute. Defendant
13 understands that, under the Constitution, the United States Code, the
14 Federal Rules of Criminal Procedure (including Rules 11, 32, and 43),
15 he may have the right to be physically present at these hearings.
16 Defendant understands that right and, after consulting with counsel,
17 voluntarily agrees to waive it and to proceed remotely. Defense
18 counsel also joins in this consent, agreement, and waiver.
19 Specifically, this agreement includes, but is not limited to, the
20 following:

21 i. Defendant consents under Section 15002(b) of the
22 CARES Act to proceed with his change of plea hearing by VTC or
23 telephone, if VTC is not reasonably available.

24 ii. Defendant consents under Section 15002(b) of the
25 CARES Act to proceed with his sentencing hearing by VTC or telephone,
26 if VTC is not reasonably available.

27 iii. Defendant consents under 18 U.S.C. § 3148 and
28 Section 15002(b) of the CARES Act to proceed with any hearing

1 regarding alleged violations of the conditions of pre-trial release
2 by VTC or telephone, if VTC is not reasonably available.

3 e. Not commit any crime; however, offenses that would be
4 excluded for sentencing purposes under United States Sentencing
5 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
6 within the scope of this agreement.

7 f. Be truthful at all times with the United States
8 Probation and Pretrial Services Office and the Court.

9 g. Pay the applicable special assessment at or before the
10 time of sentencing unless defendant has demonstrated a lack of
11 ability to pay such assessments.

12 THE USAO'S OBLIGATIONS

13 3. The USAO agrees to:

14 a. Not contest facts agreed to in this agreement.

15 b. Abide by all agreements regarding sentencing contained
16 in this agreement.

17 c. At the time of sentencing, provided that defendant
18 demonstrates an acceptance of responsibility for the offense up to
19 and including the time of sentencing, recommend a two-level reduction
20 in the applicable Sentencing Guidelines offense level, pursuant to
21 U.S.S.G. § 3E1.1. Defendant understands that, because defendant did
22 not timely notify authorities of his intention to plead guilty in
23 order to permit the government to avoid preparing for trial and to
24 efficiently allocate resources, the government will not move for an
25 additional one-level reduction under that section.

26 d. At the time of sentencing, move to dismiss the
27 information filed against defendant on December 23, 2020 pursuant to
28 Title 21, United States Code, Section 851. Defendant agrees,

1 however, that at the time of sentencing the Court may consider the
2 dismissed information in determining the applicable Sentencing
3 Guidelines range, the propriety and extent of any departure from that
4 range, and the sentence to be imposed after consideration of the
5 Sentencing Guidelines and all other relevant factors under 18 U.S.C.
6 § 3553(a).

7 NATURE OF THE OFFENSE

8 4. Defendant understands that for defendant to be guilty of
9 the crime charged in the indictment, that is, possession with intent
10 to distribute cocaine, in violation of Title 18, United States Code,
11 Sections 841(a)(1), (b)(1)(A)(ii)(II), the following must be true:
12 (1) defendant knowingly possessed cocaine; and (2) defendant
13 possessed cocaine with the intent to distribute it to another person.
14 To "possess with intent to distribute" means to possess with intent
15 to deliver or transfer possession of a controlled substance, such as
16 cocaine, to another person, with or without a financial interest in
17 the transaction.

18 5. Defendant understands that for defendant to be subject to
19 the statutory maximum and statutory minimum sentences set forth
20 below, the government must prove beyond a reasonable doubt that
21 defendant possessed at least five kilograms or more of a mixture or
22 substance containing a detectable amount of cocaine. Defendant
23 admits that defendant, in fact, possessed with intent to distribute
24 at least five kilograms of a mixture or substance containing a
25 detectable amount of cocaine, as described in the indictment.

26 PENALTIES

27 6. Defendant understands that the statutory maximum sentence
28 that the Court can impose for a violation of Title 21, United States

1 Code, Sections 841(a)(1), (b)(1)(A)(ii)(II), as charged in the
2 indictment, is: life imprisonment; a lifetime period of supervised
3 release; a fine of \$10,000,000 or twice the gross gain or gross loss
4 resulting from the offense, whichever is greatest; and a mandatory
5 special assessment of \$100.

6 7. Defendant understands that the statutory mandatory minimum
7 sentence that the Court must impose for a violation of Title 21,
8 United States Code, Sections 841(a)(1), (b)(1)(A)(ii)(II), as charged
9 in the indictment, is: ten years' imprisonment, followed by a five-
10 year period of supervised release, and a mandatory special assessment
11 of \$100.

12 8. Defendant understands that under 21 U.S.C. § 862a,
13 defendant will not be eligible for assistance under state programs
14 funded under the Social Security Act or Federal Food Stamp Act or for
15 federal food stamp program benefits, and that any such benefits or
16 assistance received by defendant's family members will be reduced to
17 reflect defendant's ineligibility.

18 9. Defendant understands that supervised release is a period
19 of time following imprisonment during which defendant will be subject
20 to various restrictions and requirements. Defendant understands that
21 if defendant violates one or more of the conditions of any supervised
22 release imposed, defendant may be returned to prison for all or part
23 of the term of supervised release authorized by statute for the
24 offense that resulted in the term of supervised release.

25 10. Defendant understands that, by pleading guilty, defendant
26 may be giving up valuable government benefits and valuable civic
27 rights, such as the right to vote, the right to possess a firearm,
28 the right to hold office, and the right to serve on a jury.

1 Defendant understands that he is pleading guilty to a felony and that
2 it is a federal crime for a convicted felon to possess a firearm or
3 ammunition. Defendant understands that the conviction in this case
4 may also subject defendant to various other collateral consequences,
5 including but not limited to revocation of probation, parole, or
6 supervised release in another case and suspension or revocation of a
7 professional license. Defendant understands that unanticipated
8 collateral consequences will not serve as grounds to withdraw
9 defendant's guilty plea.

10 11. Defendant and his counsel have discussed the fact that, and
11 defendant understands that, if defendant is not a United States
12 citizen, the conviction in this case makes it practically inevitable
13 and a virtual certainty that defendant will be removed or deported
14 from the United States. Defendant may also be denied United States
15 citizenship and admission to the United States in the future.
16 Defendant understands that while there may be arguments that
17 defendant can raise in immigration proceedings to avoid or delay
18 removal, removal is presumptively mandatory and a virtual certainty
19 in this case. Defendant further understands that removal and
20 immigration consequences are the subject of a separate proceeding and
21 that no one, including his attorney or the Court, can predict to an
22 absolute certainty the effect of his conviction on his immigration
23 status. Defendant nevertheless affirms that he wants to plead guilty
24 regardless of any immigration consequences that his plea may entail,
25 even if the consequence is automatic removal from the United States.

26 FACTUAL BASIS

27 12. Defendant admits that defendant is, in fact, guilty of the
28 offense to which defendant is agreeing to plead guilty. Defendant

1 and the USAO agree to the statement of facts provided below and agree
2 that this statement of facts is sufficient to support a plea of
3 guilty to the charge described in this agreement and to establish the
4 Sentencing Guidelines factors set forth in paragraph 14 below but is
5 not meant to be a complete recitation of all facts relevant to the
6 underlying criminal conduct or all facts known to either party that
7 relate to that conduct.

8 On November 27, 2019, in Los Angeles County, within the Central
9 District of California, defendant knowingly and intentionally
10 possessed with intent to distribute 6 kilograms of cocaine.

11 Specifically, on the evening of November 27, 2019, defendant
12 flew from Newark, New Jersey into Los Angeles International Airport
13 ("LAX"). Defendant remained in Los Angeles for several hours before
14 returning to LAX that same evening to board another flight back to
15 Newark. At LAX for his return flight, defendant knowingly possessed
16 a single suitcase that he knew contained cocaine within it, and that
17 specifically contained 6 kilograms of cocaine in six vacuum sealed
18 packages. Defendant possessed the cocaine in the suitcase at LAX
19 intending to distribute the cocaine to another person after his
20 return flight. Defendant checked the suitcase with the cocaine as
21 luggage for his flight and then boarded his flight and flew back to
22 Newark.

23 SENTENCING FACTORS

24 13. Defendant understands that in determining defendant's
25 sentence the Court is required to calculate the applicable Sentencing
26 Guidelines range and to consider that range, possible departures
27 under the Sentencing Guidelines, and the other sentencing factors set
28 forth in 18 U.S.C. § 3553(a). Defendant understands that the

1 Sentencing Guidelines are advisory only, that defendant cannot have
2 any expectation of receiving a sentence within the calculated
3 Sentencing Guidelines range, and that after considering the
4 Sentencing Guidelines and the other § 3553(a) factors, the Court will
5 be free to exercise its discretion to impose any sentence it finds
6 appropriate between the mandatory minimum and up to the maximum set
7 by statute for the crime of conviction.

8 14. Defendant and the USAO agree to the following applicable
9 Sentencing Guidelines factors:

10 Base Offense Level:	30	U.S.S.G. § 2D1.1(a)(5),
		(c)(5) [for at least 5 KG
		but less than 15 KG of
		cocaine]

13 Defendant and the USAO reserve the right to argue that additional
14 specific offense characteristics, adjustments, and departures under
15 the Sentencing Guidelines are appropriate, with the exception that
16 the parties agree that because defendant did not timely notify the
17 government of his intention to plead guilty before the government
18 expended substantial resources preparing for trial, defendant is not
19 entitled to a one-level reduction in offense level under U.S.S.G.
20 § 3E1.1(b). Defendant understands that defendant's offense level
21 could be increased if defendant is a career offender under U.S.S.G.
22 §§ 4B1.1 and 4B1.2. If defendant's offense level is so altered,
23 defendant and the USAO will not be bound by the agreement to
24 Sentencing Guideline factors set forth above.

25 15. Defendant understands that there is no agreement as to
26 defendant's criminal history or criminal history category.

27 16. Defendant and the USAO reserve the right to argue for a
28 sentence outside the sentencing range established by the Sentencing

Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

WAIVER OF CONSTITUTIONAL RIGHTS

17. Defendant understands that by pleading guilty, defendant gives up the following rights:

a. The right to persist in a plea of not guilty.

b. The right to a speedy and public trial by jury.

c. The right to be represented by counsel -- and if necessary have the Court appoint counsel -- at trial. Defendant understands, however, that, defendant retains the right to be represented by counsel -- and if necessary have the Court appoint counsel -- at every other stage of the proceeding.

d. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e. The right to confront and cross-examine witnesses against defendant.

f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF APPEAL OF CONVICTION

18. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty plea was involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's conviction on the offense to which defendant is pleading guilty. Defendant understands that this waiver includes, but is not limited to, arguments that the statutes to which defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's plea of guilty.

WAIVER OF APPEAL OF SENTENCE

19. In return for the government's agreement to dismiss the information filed against defendant on December 23, 2020 with respect to a prior serious drug felony under 21 U.S.C. §§ 841(b) and 851, which would increase the applicable mandatory minimum sentence by five years, and the other consideration in this agreement, defendant gives up the right to appeal all of the following: (a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court, including, to the extent permitted by law, the constitutionality or legality of defendant's sentence, provided it is within the statutory maximum; (c) the fine imposed by the Court, provided it is within the statutory maximum; (e) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (f) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in Amended General Order 20-04 of this Court; the drug testing conditions

1 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and
2 drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

3 20. Defendant also gives up any right to bring a post-
4 conviction collateral attack on the conviction or sentence, except a
5 post-conviction collateral attack based on a claim of ineffective
6 assistance of counsel. Defendant understands that this waiver
7 includes, but is not limited to, arguments that the statutes to which
8 defendant is pleading guilty are unconstitutional, any and all claims
9 that the statement of facts provided herein is insufficient to
10 support defendant's plea of guilty, and any post-conviction
11 collateral attack based on an explicitly retroactive change in the
12 applicable Sentencing Guidelines, sentencing statutes, or statutes of
13 conviction.

14 21. This agreement does not affect in any way the right of the
15 USAO to appeal the sentence imposed by the Court.

16 RESULT OF WITHDRAWAL OF GUILTY PLEA

17 22. Defendant agrees that if, after entering a guilty plea
18 pursuant to this agreement, defendant seeks to withdraw and succeeds
19 in withdrawing defendant's guilty plea on any basis other than a
20 claim and finding that entry into this plea agreement was
21 involuntary, then (a) the USAO will be relieved of all of its
22 obligations under this agreement; and (b) should the USAO choose to
23 pursue any charge or any allegation of a prior conviction for a
24 serious drug felony that was either dismissed or not filed as a
25 result of this agreement, then (i) any applicable statute of
26 limitations will be tolled between the date of defendant's signing of
27 this agreement and the filing commencing any such action; and
28 (ii) defendant waives and gives up all defenses based on the statute

1 of limitations, any claim of pre-indictment delay, or any speedy
2 trial claim with respect to any such action, except to the extent
3 that such defenses existed as of the date of defendant's signing this
4 agreement.

5 EFFECTIVE DATE OF AGREEMENT

6 23. This agreement is effective upon signature and execution of
7 all required certifications by defendant, defendant's counsel, and an
8 Assistant United States Attorney.

9 BREACH OF AGREEMENT

10 24. Defendant agrees that if defendant, at any time after the
11 signature of this agreement and execution of all required
12 certifications by defendant, defendant's counsel, and an Assistant
13 United States Attorney, knowingly violates or fails to perform any of
14 defendant's obligations under this agreement ("a breach"), the USAO
15 may declare this agreement breached. All of defendant's obligations
16 are material, a single breach of this agreement is sufficient for the
17 USAO to declare a breach, and defendant shall not be deemed to have
18 cured a breach without the express agreement of the USAO in writing.
19 If the USAO declares this agreement breached, and the Court finds
20 such a breach to have occurred, then: (a) if defendant has previously
21 entered a guilty plea pursuant to this agreement, defendant will not
22 be able to withdraw the guilty plea, and (b) the USAO will be
23 relieved of all its obligations under this agreement.

24 25. Following the Court's finding of a knowing breach of this
25 agreement by defendant, should the USAO choose to pursue any charge
26 or any allegation of a prior conviction for a serious drug felony
27 that was either dismissed or not filed as a result of this agreement,
28 then:

1 a. Defendant agrees that any applicable statute of
2 limitations is tolled between the date of defendant's signing of this
3 agreement and the filing commencing any such action.

4 b. Defendant waives and gives up all defenses based on
5 the statute of limitations, any claim of pre-indictment delay, or any
6 speedy trial claim with respect to any such action, except to the
7 extent that such defenses existed as of the date of defendant's
8 signing this agreement.

9 c. Defendant agrees that: (i) any statements made by
10 defendant, under oath, at the guilty plea hearing (if such a hearing
11 occurred prior to the breach); (ii) the agreed to factual basis
12 statement in this agreement; and (iii) any evidence derived from such
13 statements, shall be admissible against defendant in any such action
14 against defendant, and defendant waives and gives up any claim under
15 the United States Constitution, any statute, Rule 410 of the Federal
16 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
17 Procedure, or any other federal rule, that the statements or any
18 evidence derived from the statements should be suppressed or are
19 inadmissible.

20 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

21 OFFICE NOT PARTIES

22 26. Defendant understands that the Court and the United States
23 Probation and Pretrial Services Office are not parties to this
24 agreement and need not accept any of the USAO's sentencing
25 recommendations or the parties' agreements to facts or sentencing
26 factors.

27 27. Defendant understands that both defendant and the USAO are
28 free to: (a) supplement the facts by supplying relevant information

1 to the United States Probation and Pretrial Services Office and the
2 Court, (b) correct any and all factual misstatements relating to the
3 Court's Sentencing Guidelines calculations and determination of
4 sentence, and (c) argue on appeal and collateral review that the
5 Court's Sentencing Guidelines calculations and the sentence it
6 chooses to impose are not error, although each party agrees to
7 maintain its view that the calculations in paragraph 14 are
8 consistent with the facts of this case. While this paragraph permits
9 both the USAO and defendant to submit full and complete factual
10 information to the United States Probation and Pretrial Services
11 Office and the Court, even if that factual information may be viewed
12 as inconsistent with the facts agreed to in this agreement, this
13 paragraph does not affect defendant's and the USAO's obligations not
14 to contest the facts agreed to in this agreement.

15 28. Defendant understands that even if the Court ignores any
16 sentencing recommendation, finds facts or reaches conclusions
17 different from those agreed to, and/or imposes any sentence up to the
18 maximum established by statute, defendant cannot, for that reason,
19 withdraw defendant's guilty plea, and defendant will remain bound to
20 fulfill all defendant's obligations under this agreement. Defendant
21 understands that no one -- not the prosecutor, defendant's attorney,
22 or the Court -- can make a binding prediction or promise regarding
23 the sentence defendant will receive, except that it will be between
24 the statutory mandatory minimum and the statutory maximum.

25 NO ADDITIONAL AGREEMENTS

26 29. Defendant understands that, except as set forth herein,
27 there are no promises, understandings, or agreements between the USAO
28 and defendant or defendant's attorney, and that no additional

promise, understanding, or agreement may be entered into unless in a writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

30. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

TRACY L. WILKISON
Acting United States Attorney

SOLOMON KIM
ANDREW M. ROACH
Assistant United States Attorneys

DARREN FITZGERALD MCGHEE
Defendant

ELENA R. SADOWSKY
Attorney for Defendant
DARREN FITZGERALD MCGHEE

April 14, 2021

Date

04/14/2021

Date

4/14/21

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charge and wish to take advantage of the promises set forth in this agreement, and not for any other reason.



DARREN FITZGERALD MCGHEE
Defendant

04/14/2021

Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am DARREN FITZGERALD MCGHEE's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of a guilty plea pursuant to this agreement.



4/14/21

ELENA R. SADOWKSY
Attorney for Defendant
DARREN FITZGERALD MCGHEE

Date