

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

ROBERT IAN THATCHER,

Defendant.

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17-CR-6094FPG

**PLEA AGREEMENT**

The defendant, ROBERT IAN THATCHER, and the United States Attorney for the Western District of New York (hereinafter “the government”) hereby enter into a plea agreement with the terms and conditions as set out below.

**I. THE PLEA AND POSSIBLE SENTENCE**

1. The defendant agrees to waive indictment and plead guilty to a one-count Superseding Information which charges a violation of Title 21, United States Code, Section 846 (conspiracy to manufacture, possess with intent to distribute, and distribute, U-47700 and 100 grams or more of a fentanyl analogue) for which the mandatory minimum term of imprisonment is 10 years and the maximum possible sentence is a term of life imprisonment, a fine of \$10,000,000, a mandatory \$100 special assessment, and a term of supervised release of at least 5 years and up to life. The defendant understands that the penalties set forth in this paragraph are the minimum and maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 5 years, without credit for time previously served on supervised release.

## **II. ELEMENTS AND FACTUAL BASIS**

3. The defendant understands the nature of the offense set forth in ¶ 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

- a. that an agreement existed between two or more persons to commit a controlled substance felony offense, to wit, manufacturing and/or possessing with intent to distribute and/or distributing a mixture or substance containing a controlled substance and/or a controlled substance analogue intended for human consumption;
- b. that the defendant knew of the existence of the agreement;
- c. that the defendant intended to participate in the unlawful agreement; and
- d. that at least 100 grams of a mixture and substance containing a detectable amount of an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide (fentanyl), a Schedule II controlled substance, was reasonably foreseeable to the defendant as being within the scope of the agreement.

## **FACTUAL BASIS**

4. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

- a. From in or about 2015, through and including on or about May 16, 2017, in the Western District of New York, and elsewhere, the defendant, ROBERT IAN THATCHER, conspired and agreed with

Maximillian Sams, Jesus Rivera, Anthony Prettyman, Terrance Washington, Dwayne Banks a/k/a Fizzle a/k/a Fizz, Carlito Rios, Jr., and others known and unknown, to commit the following offenses, that is (1) from in or about 2015 to November 28, 2016, to possess with intent to distribute, and to distribute, 100 grams or more of a mixture and substance containing a detectable amount of furanyl fentanyl, a Schedule I controlled substance analogue and analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (fentanyl), a Schedule II controlled substance; (2) from November 14, 2016, to on or about May 16, 2017, to possess with intent to distribute, and to distribute, quantities of U-47700, a Schedule I controlled substance; and (3) from November 29, 2016, to on or about May 16, 2017, to possess with intent to distribute, and to distribute, 100 grams or more of a mixture and substance containing a detectable amount of furanyl fentanyl, a Schedule I controlled substance and an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (fentanyl), a Schedule II controlled substance.

- b. Between approximately 2015 and May 16, 2017, the defendant and co-conspirator Maximillian Sams operated a large-scale pill manufacturing operation in the Southern Tier of New York and northern Pennsylvania. In furtherance of the conspiracy, the defendant and Sams imported bulk quantities of furanyl fentanyl and U-47700 from overseas suppliers located in China. They ordered the quantities of furanyl fentanyl and U-47700 over the Internet on what is known as “the dark web,” and used different people and addresses in New York and Pennsylvania to receive the shipments of drugs. The defendant and Sams purchased equipment and materials – including pill presses/mechanical tableting machines, microcrystalline cellulose, lactose magnesium stearate, and powdered food coloring – which they used to manufacture tens of thousands blue pills containing furanyl fentanyl and U-47700. They manufactured the pills to look like legitimate 30 milligram Percocet pills by making them blue and imprinting the pills with letters and numbers that are used by legitimate Percocet manufacturers. After manufacturing the pills, the defendant and Sams would distribute them in large quantities to other co-conspirators – including Anthony Prettyman, Jesus Rivera, Terrance Washington, and Dwayne Banks a/k/a Fizzle a/k/a Fizz – who would then distribute the pills to various customers in the Elmira area. In addition, Sams supplied large quantities of the pills to an individual in the Charlotte, North Carolina area.
- c. In furtherance of the conspiracy, the defendant and Sams used residences at 604 South Lehigh Avenue in Sayre, Pennsylvania (hereinafter, “the Sayre location”), and 665 Sawdey Road, Catlin, New York (hereinafter, “the Catlin location”), to manufacture and process

the pills for distribution. During the execution of a search warrant at the Sayre location on May 16, 2017, law enforcement agents recovered, among other things, 244 blue pills containing furanyl fentanyl, four long guns and ammunition. In addition, during the execution of a search warrant at the Catlin location on May 18, 2017, law enforcement agents recovered, among other things, materials used by the defendant and Sams to manufacture the pills for distribution (including approximately 691 grams of crystalline cellulose, approximately 311 grams of lactose, blue powder food coloring, a sifter and two funnels). During the conspiracy, the defendant also possessed several firearms at the Sayre location and his residence in Elmira.

- d. In furtherance of the conspiracy, Sams used co-conspirator Anthony Prettyman to transport 5,330 blue pills containing furanyl fentanyl from Elmira to North Carolina in October 2016. At that time, Sams asked Prettyman to drive the pills – which had been manufactured by the defendant and Sams – to a customer in Charlotte, North Carolina on behalf of the defendant. Prettyman obtained the pills – which were concealed in the false bottom of a paint can – from Sams. On or about October 25, 2016, Prettyman – along with an individual with the initials C.L. – drove the pills from Elmira to North Carolina. Sams arranged for Prettyman to deliver the pills to a male customer in Charlotte and sent Prettyman a text message with the specific address to which Prettyman was to deliver the pills. In North Carolina, deputies with the Iredell County (North Carolina) Sheriff's Office conducted a traffic stop of the vehicle in which Prettyman and C.L. were traveling. During a subsequent search, the deputies recovered and seized the paint can containing 5,330 blue pills from inside Prettyman's vehicle.
- e. In early 2017, the defendant arranged for a package of furanyl fentanyl that he ordered over the dark web to be sent to co-conspirator Carlito Rios, Jr. On March 13, 2017, Customs and Border Protection at the John F. Kennedy International Airport Mail Branch in Queens, New York, examined a United States Postal Service package addressed to co-conspirator Carlito Rios, Jr., at 1015 Oak Street, Elmira, New York. The sender was listed as an entity in China. Upon inspection, the package was found to contain approximately 249 grams of furanyl fentanyl. After the package was seized, the defendant gave Rios a quantity of blue pills containing furanyl fentanyl as compensation. The defendant and Sams intended to use the seized furanyl fentanyl to manufacture and distribute additional quantities of the blue pills in the Elmira area.
- f. The objective of the conspiracy was to manufacture and distribute quantities of pills containing furanyl fentanyl and U-47700 for a profit,

and the defendant and Sams shared the proceeds generated by the conspiracy. During the conspiracy, the defendant's involvement in trafficking pills was his sole occupation and he derived income from trafficking pills – in any 12-month period – exceeding 2,000 times the then-existing minimum wage under federal law.

- g. At least two individuals – a female with the initials B.S. and a male with the initials C.H. – died as a result of opioid-induced respiratory depression from the ingestion of blue pills containing furanyl fentanyl and U-47700 manufactured and distributed by the defendant and Sams. In addition, at least one individual – a male with the initials J.M. – overdosed on more than one occasion after using blue pills manufactured and distributed by the defendant and Sams, but survived after treatment by first responders, who administered Narcan.
- h. During the conspiracy, the defendant knew that the substances he and his co-conspirators manufactured, possessed and distributed were controlled under the federal drug laws. The defendant admits and agrees that furanyl fentanyl is a Schedule I controlled substance analogue of fentanyl (a Schedule II controlled substance), and an analogue of fentanyl, because the quantities of furanyl fentanyl possessed and distributed by the defendant and his co-conspirators were intended for human consumption (in other words, intended for customers and users to ingest, inhale, swallow, or otherwise consume the pills); furanyl fentanyl has a chemical structure substantially similar to that of fentanyl; and furanyl fentanyl has a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect of fentanyl.
- i. Approximately seven (7) kilograms of a mixture and substance containing furanyl fentanyl, and one (1) kilogram of a mixture and substance containing U-47700, are the amounts involved in the defendant's relevant conduct encompassed in the Information, which could be readily proven by the government at trial or at a sentencing hearing. The parties agree that, based on the Drug Equivalency Tables of the Sentencing Guidelines, the amounts of furanyl fentanyl and U-47700 that could be readily proven by the government at trial or at a sentencing hearing against the defendant is the equivalent of at least 10,000 kilograms but less than 30,000 kilograms of marijuana.

### **III. SENTENCING GUIDELINES**

5. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

#### **BASE OFFENSE LEVEL**

6. The government and the defendant agree that Guidelines §§ 2D1.1(a)(5) and 2D1.1(c)(3) apply to the offense of conviction and provide for a base offense level of 34.

#### **SPECIFIC OFFENSE CHARACTERISTICS** **U.S.S.G. CHAPTER 2 ADJUSTMENTS**

7. The government and the defendant agree that the following specific offense characteristics do apply:

- a. the two-level increase pursuant to Guidelines § 2D1.1(b)(1) (possession of dangerous weapon);
- b. the two-level increase pursuant to Guidelines § 2D1.1(b)(12) (maintaining a premises for purpose of manufacturing or distributing a controlled substance); and
- c. the two-level increase pursuant to Guidelines § 2D1.1(b)(15) (defendant received aggravating role adjustment, and was directly involved in importation of controlled substance and committed offense as part of pattern of criminal conduct engaged in as a livelihood).

#### **U.S.S.G. CHAPTER 3 ADJUSTMENTS**

8. The government and the defendant agree that the following adjustment to the base offense level does apply:

- a. the four-level upward adjustment of Guidelines § 3B1.1(a) (aggravating role in offense).

#### **ADJUSTED OFFENSE LEVEL**

9. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 44.

#### **ACCEPTANCE OF RESPONSIBILITY**

10. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility) and further agrees to move the Court to apply the additional one (1) level downward adjustment of Guidelines § 3E1.1(b), which would result in a total offense level of 41.

#### **CRIMINAL HISTORY CATEGORY**

11. It is the understanding of the government and the defendant that the defendant's criminal history category is II. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

**GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT**

12. It is the understanding of the government and the defendant that, with a total offense level of 41 and criminal history category of II, and taking into account the applicable statutory minimum penalties, the defendant's sentencing range would be **a term of imprisonment of 360 months to life, a fine of \$50,000 to \$10,000,000, and a period of supervised release of 5 years**. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the minimum and maximum penalties set forth in ¶ 1 of this agreement.

13. Notwithstanding the above calculations, it is the agreement of the parties pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that the Court at the time of sentence impose a **276-month term of imprisonment** as part of the appropriate sentence in this case. If, after reviewing the presentence report, the Court rejects this agreement, the parties will be relieved of their other obligations under this agreement and the defendant shall then be afforded the opportunity to withdraw the plea of guilty. This agreement does not affect the amount of a fine, the amount of restitution, or the length and conditions of a term of supervised release that may be imposed by the Court at sentencing.

14. The government and the defendant agree to the Sentencing Guidelines calculations set forth in this agreement and neither party will advocate or recommend the application of any other Guideline, or move for any Guidelines departure, or move for or recommend a sentence outside the Guidelines, except as specifically set forth in this agreement. A breach of this paragraph by one party will relieve the other party of any



agreements made in this plea agreement with respect to sentencing motions and recommendations. A breach of this paragraph by the defendant shall also relieve the government from any agreements to dismiss or not pursue additional charges.

15. The defendant understands that, except as set forth in ¶ 13, above, the Court is not bound to accept any Sentencing Guidelines calculations set forth in this agreement and the defendant will not be entitled to withdraw the plea of guilty based on the sentence imposed by the Court.

#### **IV. STATUTE OF LIMITATIONS**

16. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to the unlawful possession, manufacture, distribution or importation of controlled substances and/or controlled substance analogues, money laundering, and the illegal possession of firearms, which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

#### **V. GOVERNMENT RIGHTS AND RESERVATIONS**

17. The defendant understands that the government has reserved the right to:

- a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;
- b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;
- c. advocate for a specific sentence consistent with the terms of this agreement, including the amount of a fine and/or the method of payment; and
- d. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information, including conduct and statements by the defendant subsequent to this agreement, regarding the recommendation or factor.

18. At sentencing, the government will move to dismiss the Indictment and the Criminal Complaint pending against the defendant under Magistrate's N0. 17-MJ-4059, insofar as they relate to the defendant.

19. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

## **VI. APPEAL RIGHTS**

20. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal and collaterally attack any component of a sentence

imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 12 above, notwithstanding the manner in which the Court determines the sentence. In the event of an appeal of the defendant's sentence by the government, the defendant reserves the right to argue the correctness of the defendant's sentence.

21. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

22. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 12 above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

## **VII. TOTAL AGREEMENT AND AFFIRMATIONS**

23. This plea agreement represents the total agreement between the defendant, ROBERT IAN THATCHER, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

JAMES P. KENNEDY, JR.  
United States Attorney  
Western District of New York

BY:   
BRETT A. HARVEY  
Assistant U.S. Attorney

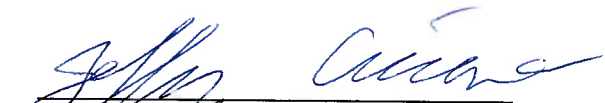
Dated: October 25, 2018

**ACKNOWLEDGMENT**

I, ROBERT IAN THATCHER, have read this agreement, which consists of 12 pages. I have had a full opportunity to discuss this agreement with my attorney, Jeffrey L. Ciccone, Esq. I agree that it represents the total agreement reached between me and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

  
ROBERT IAN THATCHER  
Defendant

Dated: October 25, 2018

  
JEFFREY L. CICCONE, ESQ.  
Attorney for the Defendant

Dated: October 25, 2018