

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 MICHAEL SCHLUETER,)
)
 Defendant.)

No. CR-12-199-R

PLEA AGREEMENT

Introduction

1. This document contains the entire plea agreement between defendant, Michael Schlueter, and the United States through its undersigned attorney. No other agreement or promise exists, nor may any additional agreement be entered into unless in writing and signed by all parties. Any unilateral modification of this agreement is hereby rejected by the United States. This agreement applies only to the criminal violations described and does not apply to any civil matter or any civil forfeiture proceeding except as specifically set forth. This agreement binds the United States Attorneys Offices for the Western District of Oklahoma, the Eastern District of Louisiana, the Southern District of Ohio, the Eastern District of North Carolina, the District of Minnesota, and the Middle District of Florida, and does not bind any other federal, state or local prosecuting,

administrative or regulatory authority. If defendant does not accept the terms of this agreement by August 24, 2012, the offer is withdrawn.

Guilty Plea

2. Defendant agrees to enter a plea of guilty to an Information in Case Number CR- 12-199-R charging that from in or about October of 2011 to in or about February of 2012, in Oklahoma City, Oklahoma, within the Western District of Oklahoma and elsewhere, Michael Schlueter, engaged in dispensing prescription drugs that were misbranded within the meaning of 21 U.S.C. §§ 352(f)(1) and 353(b)(1) while they were held for sale after shipment in interstate commerce in violation of 21 U.S.C. § 331(k). To be found guilty as charged, the defendant must admit (1) that he was an executive of OK Male Clinic during the time period beginning on or about October of 2011 and ending on or about February of 2012; (2) as an executive of OK Male Clinic he stood in responsible relation to individuals who dispensed the prescription drugs phentolamine, prostaglandin, alprostadil, and papaverine that were shipped from an out-of state pharmacy to OK Male Clinic in Oklahoma; (3) that the prescription drugs were not in the possession of a retail pharmacy regularly and lawfully engaged in dispensing prescription drugs; and (4) that the drugs were not dispensed pursuant to a valid prescription of a practitioner licensed to administer such drugs.

Maximum Penalty, Restitution and Special Assessments

3. The maximum penalty that could be imposed as a result of this plea is 1 year imprisonment or a fine of \$1,000.00 (or a possible alternative fine of \$100,000.00 pursuant to 18 U.S.C. § 3571), or both such fine and imprisonment, as well as a mandatory special assessment of \$25.00, and a term of supervised release of 1 year.

4. Defendant agrees to pay the special assessment due the United States to the Office of the United States Court Clerk immediately following sentencing. Defendant understands that any fine or restitution ordered by the Court is immediately due unless the Court provides for payment on a date certain or in installments.

5. For certain statutory offenses, the Court must also impose a term of supervised release, which defendant will begin to serve after being released from custody. For all other offenses, the court may impose a term of supervised release to be served following release from custody. During the term of supervised release, defendant will be subject to conditions that will include prohibitions against violating local, state or federal law, reporting requirements, restrictions on travel and residence, and possible testing for controlled substance use. If defendant violates the conditions of his supervised release, the Court may revoke his supervised release, and sentence him to an additional term of imprisonment. This additional term of imprisonment would be served without credit for the time defendant successfully spent on supervised release. When combined, the original term of

imprisonment and any subsequent term of imprisonment the Court imposes may exceed the statutory maximum prison term allowable for the offense.

Sentencing Guidelines

6. The parties acknowledge that 18 U.S.C. § 3553(a), directs the Court to consider certain factors in imposing sentence, including the Sentencing Guidelines promulgated by the United States Sentencing Commission. Consequently, although the parties recognize that the Sentencing Guidelines are only advisory, they have entered into certain stipulations and agreements with respect to the Guidelines. Based upon the information that is known to the parties on the date this agreement is executed, they expect to take, but are not limited to, the following positions at sentencing.

The parties agree defendant should receive a 2-level downward adjustment for acceptance of responsibility pursuant to USSG § 3E1.1(a), if he commits no further crimes, does not falsely deny or frivolously contest relevant conduct, and fully complies with all of the other terms of this agreement. Further, to the extent the Court finds defendant qualifies under USSG § 3E1.1(a) for a 2-level downward adjustment for acceptance of responsibility, and USSG § 3E1.1(b) is applicable, the government agrees to move for the additional 1-level downward adjustment of § 3E1.1(b), if defendant accepts the terms of this plea agreement by the deadline established in Paragraph 1.

Further, the government agrees to recommend that a sentence of probation and a \$25.00 special assessment is the appropriate disposition of this case.

Waiver of Right to Appeal and Bring Collateral Challenge

7. Defendant understands that the Court will consider those factors in 18 U.S.C. § 3553(a) in determining his sentence. Defendant also understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum for the offense(s) to which he is pleading guilty. Defendant further understands that 28 U.S.C. § 1291, and 18 U.S.C. § 3742, give him the right to appeal the judgment and sentence imposed by the Court. Acknowledging all this, defendant in exchange for the promises and concessions made by the United States in this plea agreement, knowingly and voluntarily waives his right to:

- a. Appeal or collaterally challenge his guilty plea, sentence and restitution imposed, and any other aspect of his conviction;
- b. Appeal, collaterally challenge, or move to modify under 18 U.S.C. § 3582(c)(2) or some other ground, his sentence as imposed by the Court and the manner in which the sentence is determined, provided the sentence is within or below the advisory guideline range determined by the Court to apply to this case. Defendant acknowledges that this waiver remains in full effect and is enforceable, even if the Court rejects one or more of the positions of the United States or defendant set forth in paragraph 6; and

c. It is provided that defendant specifically does not waive the right to appeal a sentence above the advisory sentencing guideline range determined by the Court to apply to this case.

8. The United States agrees to waive its right under 18 U.S.C. § 3742 to appeal the sentence imposed by the Court and the manner in which the sentence was determined, provided defendant's sentence is within the advisory guideline range determined by the Court to apply to this case. By this agreement, the United States specifically does not waive its right to appeal a sentence below the advisory sentencing guideline range determined by the Court to apply to this case.

Waiver of Claim to Prevailing Party Status

9. Defendant expressly acknowledges that he is not a “prevailing party” within the meaning of 18 U.S.C. § 3006A with respect to the count of conviction. If defendant is represented by retained counsel, he voluntarily, knowingly, and intelligently waives any rights he may have to seek reasonable attorney’s fees and other litigation expenses under 18 U.S.C. § 3006A.

Obligations of Defendant

10. It is understood by the parties that no statements made by defendant subsequent to and in response to this agreement will be used directly against him in any subsequent criminal proceeding, except in a prosecution for perjury or a false-statement offense. This restriction does not affect the rights and obligations of the United States, as

stated herein, concerning the prosecution of the instant charged offenses. Moreover, the parties also recognize that the United States specifically reserves the right to (a) use any statements made by defendant to impeach him if he ever testifies in an inconsistent or contrary manner during any trial or other proceeding; and (b) to pursue and investigate any leads which may arise from statements made by defendant.

11. It is understood that, should defendant commit any further crimes, or should he otherwise violate any provision of this agreement, the United States may declare this agreement null and void and prosecute defendant for any and all his federal criminal violations, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be brought against defendant, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecution. Defendant hereby waives all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this agreement is signed.

12. The parties also recognize that in the event it is determined that defendant has committed any further crimes, or otherwise violated any provision of this agreement, (a) all statements made by defendant to the United States or other designated law enforcement agents, or made before a tribunal, whether prior to or subsequent to the signing of this agreement, and any leads from such statements shall be admissible in evidence in any criminal proceeding brought against defendant; and (b) defendant shall assert no claim under

the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule or law that such statements or any leads therefrom should be suppressed. It is the intent of this agreement to waive all rights in the foregoing respects.

The Obligations of the United States

13. If defendant enters a plea of guilty as described above and fully meets all obligations under this agreement, he will not be further prosecuted by the United States Attorney's Offices for the Western District of Oklahoma, the Southern District of Ohio, the Eastern District of North Carolina, the District of Minnesota, and the Middle District of Florida, for any crimes related to his participation in the distribution of phentolamine, prostaglandin, alprostadil, and papaverine. This agreement does not provide any protection against prosecution for any crime not specifically described above.

*the Eastern District of Louisiana
RHS*

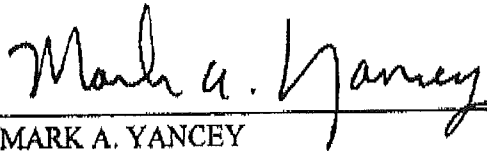
14. It is understood that the sentence to be imposed upon defendant is within the sole discretion of the Court. The United States does not make any promise or representation as to what sentence defendant will receive. The United States reserves the right to inform the Probation Office and the Court of the nature and extent of defendant's activities with respect to this case and all other activities of defendant which the United States deems relevant to sentencing.

Signatures

15. By signing this agreement, defendant acknowledges that he has discussed its terms with his attorney and understands and accepts those terms. Further, defendant acknowledges that this document contains the only terms of the agreement concerning his plea of guilty in this case, and that there are no other deals, bargains, agreements, or understandings which modify or alter these terms.

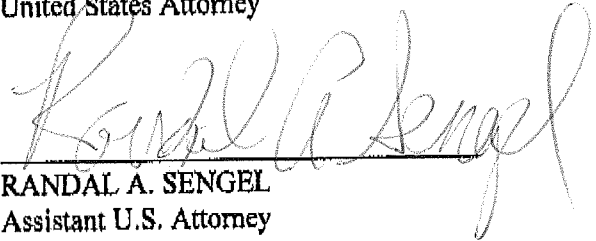
Dated this 27 day of August, 2012.

APPROVED:

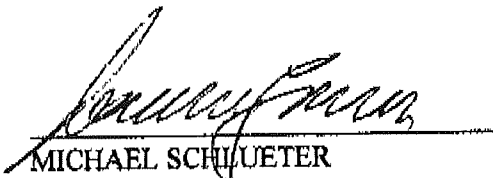


MARK A. YANCEY
Chief, Criminal Division

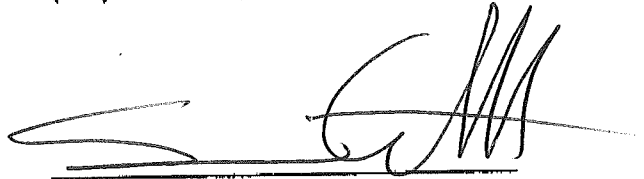
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MICHAEL SCHLUETER
Defendant



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