

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
IVAN ARMENTA,
Defendant.

NO. CR20-110 RSL

PLEA AGREEMENT

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Lyndsie R. Schmalz, Assistant United States Attorney for said District, Defendant IVAN ARMENTA, and Defendant's attorney, Nicholas Marchi, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) and (B):

1. **The Charge(s).** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to Distribution of Fentanyl, as charged in Count 3 of the Indictment, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(C).

By entering a plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering any guilty

1 | plea, Defendant will be placed under oath. Any statement given by Defendant under oath
2 | may be used by the United States in a prosecution for perjury or false statement.

3 | 2. **Elements of the Offense(s).** The elements of the offense of Distribution of
4 | Fentanyl, as charged in Count 3 of the Indictment, to which Defendant is pleading guilty
5 | are as follows:

6 | *First*, the defendant knowingly distributed fentanyl; and

7 | *Second*, the defendant knew that it was fentanyl or some other federally
8 | controlled substance.

9 | 3. **The Penalties.** Defendant understands that the statutory penalties
10 | applicable to the Distribution of Fentanyl, as charged in Count 3, are as follows: A
11 | maximum term of imprisonment of up to 20 years, a fine of up to \$1,000,000, a period of
12 | supervision following release from prison of at least 3 years, and a mandatory special
13 | assessment of \$100 dollars. If a probationary sentence is imposed, the probation period
14 | can be for up to five (5) years.

15 | Defendant understands that supervised release is a period of time following
16 | imprisonment during which Defendant will be subject to certain restrictive conditions and
17 | requirements. Defendant further understands that, if supervised release is imposed and
18 | Defendant violates one or more of the conditions or requirements, Defendant could be
19 | returned to prison for all or part of the term of supervised release that was originally
20 | imposed. This could result in Defendant serving a total term of imprisonment greater
21 | than the statutory maximum stated above.

22 | Defendant understands that as a part of any sentence, in addition to any term of
23 | imprisonment and/or fine that is imposed, the Court may order Defendant to pay
24 | restitution to any victim of the offense, as required by law.

25 | Defendant further understands that the consequences of pleading guilty may
26 | include the forfeiture of certain property, either as a part of the sentence imposed by the
27 | Court, or as a result of civil judicial or administrative process.
28 |

1 Defendant agrees that any monetary penalty the Court imposes, including the
 2 special assessment, fine, costs, or restitution, is due and payable immediately and further
 3 agrees to submit a completed Financial Statement of Debtor form as requested by the
 4 United States Attorney's Office.

5 Defendant understands that, if pleading guilty to a felony drug offense, Defendant
 6 will become ineligible for certain food stamp and Social Security benefits as directed by
 7 Title 21, United States Code, Section 862a.

8 **4. Immigration Consequences.** Defendant recognizes that pleading guilty
 9 may have consequences with respect to Defendant's immigration status if Defendant is
 10 not a citizen of the United States. Under federal law, a broad range of crimes are grounds
 11 for removal, and some offenses make removal from the United States presumptively
 12 mandatory. Removal and other immigration consequences are the subject of a separate
 13 proceeding, and Defendant understands that no one, including Defendant's attorney and
 14 the Court, can predict with certainty the effect of a guilty plea on immigration status.
 15 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any
 16 immigration consequences that Defendant's guilty plea(s) may entail, even if the
 17 consequence is Defendant's mandatory removal from the United States.

18 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
 19 pleading guilty, Defendant knowingly and voluntarily waives the following rights:
 20 a. The right to plead not guilty and to persist in a plea of not guilty;
 21 b. The right to a speedy and public trial before a jury of Defendant's
 22 peers;
 23 c. The right to the effective assistance of counsel at trial, including, if
 24 Defendant could not afford an attorney, the right to have the Court appoint
 25 one for Defendant;
 26 d. The right to be presumed innocent until guilt has been established
 27 beyond a reasonable doubt at trial;
 28

- e. The right to confront and cross-examine witnesses against Defendant at trial;
- f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

6. **United States Sentencing Guidelines.** Defendant understands and acknowledges that the Court must consider the sentencing range calculated under the United States Sentencing Guidelines and possible departures under the Sentencing Guidelines together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense(s); (2) the history and characteristics of Defendant; (3) the need for the sentence to reflect the seriousness of the offense(s), to promote respect for the law, and to provide just punishment for the offense(s); (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of Defendant; (6) the need to provide Defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

- a. The Court will determine Defendant's Sentencing Guidelines range at the time of sentencing;
- b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

1 c. The Court is not bound by any recommendation regarding the
 2 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
 3 range offered by the parties or the United States Probation Department, or by any
 4 stipulations or agreements between the parties in this Plea Agreement; and

5 d. Defendant may not withdraw a guilty plea solely because of the
 6 sentence imposed by the Court.

7 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
 8 guaranteed what sentence the Court will impose.

9 8. **Statement of Facts.** The parties agree on the following facts. Defendant
 10 admits Defendant is guilty of the charged offense(s):

11 a. The defendant, IVAN ARMENTA, knowingly distributed blue
 12 counterfeit Percocet 30 pills ("Perc 30") containing fentanyl to a Navy
 13 sailor, causing the sailor's death. ARMENTA procured the counterfeit
 14 Perc 30s from Chase Friedrich and knew that the pills contained controlled
 substances.

15 b. In April 2020, ARMENTA was a sailor in the Navy, stationed on a
 16 ship docked at Naval Base Kitsap. In early April 2020, ARMENTA left his
 17 ship and drove to Des Moines, Washington, where he purchased
 18 15 counterfeit Perc 30s from Friedrich. Each counterfeit Perc 30 weighed
 19 approximately .106 grams. ARMENTA returned to his ship and sold the
 20 pills to the victim and other sailors for \$25 a pill, a markup of \$5 a pill.
 21 ARMENTA became sick after taking one of these pills, but no one
 22 overdosed or died from taking these pills in early April.

23 c. On April 17, 2020, ARMENTA left his ship and again drove to Des
 24 Moines, Washington, where he purchased another 15 counterfeit Perc 30s
 25 from Friedrich. ARMENTA paid Friedrich \$380 in cash for the counterfeit
 26 Perc 30s and, when he returned to his ship later that afternoon, he provided
 27 them to the victim and other sailors. ARMENTA planned to collect \$25
 28 per pill from the other sailors.

d. On April 18, 2020, the victim was found unresponsive in his
 workspace on the Navy ship. He was pronounced deceased at the scene by
 first responders, and two blue counterfeit Perc 30s containing fentanyl and
 acetaminophen obtained from ARMENTA were found in the pocket of his
 uniform. A later autopsy confirmed the presence of fentanyl and its

1 metabolites, cutting agents, and lidocaine in the victim's blood, and the
2 Medical Examiner's opinion is that the victim died of fentanyl intoxication.

3 e. Two other sailors became violently ill from taking the counterfeit
4 Perc 30s that they obtained from ARMENTA, and one sailor had to be
administered Narcan for an overdose.

5 f. On April 15, 2020, three days before the victim's death, ARMENTA
6 received an Instagram message from an acquaintance in San Diego warning
7 him about counterfeit Perc 30s. This message read: "You g those are
8 pressed, watch out with pressed percs I've already got 3 customers that
have died from fentanyl overdoses."

9 The parties agree that the Court may consider additional facts contained in the
10 Presentence Report (subject to standard objections by the parties) and/or that may be
11 presented by the United States or Defendant at the time of sentencing, and that the factual
12 statement contained herein is not intended to limit the facts that the parties may present to
13 the Court at the time of sentencing.

14 10. **Sentencing Factors.** The parties agree that the following Sentencing
15 Guidelines provisions apply to the offense of Distribution of Fentanyl, as charged in
16 Count 3, in this case:

17 a. A base level of at least 12, pursuant to USSG § 2D1.1(c), based on
18 the Defendant's crime involving 30 pills containing fentanyl weighing
19 3.18 grams, but could arguably be 38, pursuant to USSG § 2D1.1(a)(2),
20 based on a death resulting from the use of the controlled substances, and
21 both parties reserve the right to argue their position on this issue at the
22 sentencing.

23 The parties agree they are free to present arguments regarding the applicability of
24 all other provisions of the United States Sentencing Guidelines. Defendant understands,
25 however, that at the time of sentencing, the Court is free to reject these stipulated
26 adjustments, and is further free to apply additional downward or upward adjustments in
27 determining Defendant's Sentencing Guidelines range.
28

1 11. **Acceptance of Responsibility.** The United States acknowledges that *if*
 2 Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG
 3 § 3E1.1(a), Defendant's offense level should be decreased by two levels because
 4 Defendant has clearly demonstrated acceptance of responsibility by timely notifying the
 5 authorities of Defendant's intention to plead guilty, thereby permitting the United States
 6 to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

7 12. **Recommendation Regarding Imprisonment.** Pursuant to Federal Rule of
 8 Criminal Procedure 11(c)(1)(B), the United States will recommend a term of
 9 imprisonment no greater than forty-eight (48) months. The defendant understands and
 10 acknowledges that this recommendation is not binding upon the Court and that the Court
 11 is free to impose any sentence up to the statutory maximums. The defendant may not
 12 withdraw his guilty plea solely because of the sentence imposed by the Court. Except as
 13 otherwise provided in this plea agreement, the parties are free to present arguments
 14 regarding any other aspect of sentencing.

15 13. **Forfeiture.** The Defendant understands that the forfeiture of property is
 16 part of the sentence that must be imposed in this case. The Defendant agrees to forfeit to
 17 the United States immediately his right, title, and interest in all property that constitutes
 18 or is traceable to proceeds of his commission of Distribution of Fentanyl, as charged in
 19 Count 3 of the Indictment, in violation of Title 21 U.S.C. Sections 841(a)(1) and
 20 841(b)(1)(C), as well as any property that facilitated that offense. All such property is
 21 forfeitable pursuant to Title 21, United States Code, Section 853.

22 The Defendant agrees to fully assist the United States in the forfeiture of any
 23 forfeitable property and to take whatever steps are necessary to pass clear title to the
 24 United States, including but not limited to: surrendering title and executing any
 25 documents necessary to effect forfeiture; assisting in bringing any property located
 26 outside the United States within the jurisdiction of the United States; and taking whatever
 27 steps are necessary to ensure that property subject to forfeiture is not sold, disbursed,
 28 wasted, hidden, or otherwise made unavailable for forfeiture. The Defendant agrees not

1 to file a claim to any of this property in any federal forfeiture proceeding, administrative
2 or judicial, that may be or has been initiated, or to otherwise contest any federal forfeiture
3 proceeding that may be or has been initiated. The Defendant also agrees he will not assist
4 any party who may file a claim to this property in any federal forfeiture proceeding.

5 The United States reserves its right to proceed against any remaining property not
6 identified in this Plea Agreement, including any property in which the Defendant has any
7 interest or control, if that property constitutes or is traceable to proceeds of his
8 commission of Distribution of Fentanyl, or facilitated his commission of that offense.

9 14. **Abandonment of Contraband.** Defendant also agrees that, if any federal
10 law enforcement agency seized any illegal contraband that was in Defendant's direct or
11 indirect control, Defendant consents to the federal administrative disposition, official use,
12 and/or destruction of that contraband.

13 15. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
14 the United States Attorney's Office for the Western District of Washington agrees not to
15 prosecute Defendant for any additional offenses known to it as of the time of this Plea
16 Agreement based upon evidence in its possession at this time, and that arise out of the
17 conduct giving rise to this investigation. In this regard, Defendant recognizes the United
18 States has agreed not to prosecute all of the criminal charges the evidence establishes
19 were committed by Defendant solely because of the promises made by Defendant in this
20 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
21 Presentence Report, the United States Attorney's Office will provide the United States
22 Probation Office with evidence of all conduct committed by Defendant.

23 Defendant agrees that any charges to be dismissed before or at the time of
24 sentencing were substantially justified in light of the evidence available to the United
25 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
26 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
27 (1997).
28

1 **16. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
 2 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 3 Agreement and Defendant may be prosecuted for all offenses for which the United States
 4 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 5 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 6 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
 7 Defendant has waived any objection to the re-institution of any charges that previously
 8 were dismissed or any additional charges that had not been prosecuted.

9 Defendant further understands that if, after the date of this Agreement, Defendant
 10 should engage in illegal conduct, or conduct that violates any conditions of release or the
 11 conditions of confinement (examples of which include, but are not limited to, obstruction
 12 of justice, failure to appear for a court proceeding, criminal conduct while pending
 13 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
 14 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 15 additional charges against Defendant or to seek a sentence that takes such conduct into
 16 consideration by requesting the Court to apply additional adjustments or enhancements in
 17 its Sentencing Guidelines calculations in order to increase the applicable advisory
 18 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 19 advisory Guidelines range. Under these circumstances, the United States is free to seek
 20 such adjustments, enhancements, departures, and/or variances even if otherwise
 21 precluded by the terms of the Plea Agreement.

22 **17. Waiver of Appellate Rights and Rights to Collateral Attacks.**
 23 Defendant acknowledges that, by entering the guilty plea(s) required by this plea
 24 agreement, Defendant waives all rights to appeal from Defendant's conviction, and any
 25 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the
 26 judgment of conviction. Defendant further agrees that, in light of the government's
 27 promise not to pursue a statutory penalty enhancement and provided the Court imposes a
 28

1 custodial sentence that is 48 months or below, Defendant waives to the full extent of the
2 law:

3 a. Any right conferred by Title 18, United States Code, Section 3742,
4 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
5 restitution order, probation or supervised release conditions, or forfeiture order (if
6 applicable); and

7 b. Any right to bring a collateral attack against the conviction and
8 sentence, including any restitution order imposed, except as it may relate to the
9 effectiveness of legal representation; and

10 This waiver does not preclude Defendant from bringing an appropriate motion
11 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
12 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

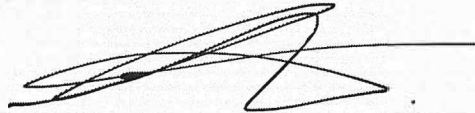
13 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
14 attacking (except as to effectiveness of legal representation) the conviction or sentence in
15 any way, the United States may prosecute Defendant for any counts, including those with
16 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
17 Agreement.

18 18. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into
19 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
20 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
21 Agreement or set forth on the record at the change of plea hearing in this matter.

22 19. **Statute of Limitations.** In the event this Plea Agreement is not accepted
23 by the Court for any reason, or Defendant breaches any of the terms of this Plea
24 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
25 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the
26 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach
27 of the Plea Agreement by Defendant is discovered by the United States Attorney's
28 Office.

1 20. **Completeness of Agreement.** The United States and Defendant
2 acknowledge that these terms constitute the entire Plea Agreement between the parties,
3 except as may be set forth on the record at the change of plea hearing in this matter. This
4 Agreement binds only the United States Attorney's Office for the Western District of
5 Washington. It does not bind any other United States Attorney's Office or any other
6 office or agency of the United States, or any state or local prosecutor.

7 Dated this 7th day of May, 2021.



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9
10 IVAN ARMENTA
Defendant



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12
13 NICHOLAS MARCHI
Attorney for Defendant

14
15 */s/ Thomas M. Woods*

16 THOMAS M. WOODS
Assistant United States Attorney

17
18
19 */s/ Lyndsie R. Schmalz*

20 LYNDISIE R. SCHMALZ
Assistant United States Attorney