

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED

NOV 21 2017

U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Cause No. 1:17-cr-00113-JMS-TAB
CAPRICE R. BEARDEN,)	-02
)	
Defendant.)	

AMENDED

^ PETITION TO ENTER PLEA OF GUILTY AND PLEA AGREEMENT

The United States of America, by counsel, Josh J. Minkler, United States Attorney for the Southern District of Indiana, Cindy J. Cho, Assistant United States Attorney, David A. Frank, Trial Attorney, United States Department of Justice, Consumer Protection Branch (the “Government”), and the defendant, Caprice R. Bearden (“the defendant”), in person and by counsel, Jennifer M. Lukemeyer, hereby inform the Court that a Plea Agreement has been reached in this case pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The following are its terms and conditions:

Part 1: Guilty Plea and Charge(s)

1. **Plea of Guilty:** The defendant petitions the Court for leave to enter and agrees to enter a plea of guilty to the following offense(s) charged in the Indictment:

A. Count 1 which charges that the defendant committed the offense of conspiracy, in violation of Title 18, United States Code, Section 371.

B. Counts 2 through 4 which charge that the defendant committed the offense of introducing adulterated drugs into interstate commerce, in violation of Title 21, United States Code, Section(s) 331(a), 333(a)(1), and 351.

C. Counts 5 through 10 which charge that the defendant committed the offense of adulterating drugs while holding for sale after the shipment of a drug component in interstate commerce, in violation of Title 21, United States Code, Sections 331(k), 333(a)(1), and 351.

2. Potential Maximum Penalties:

A. Count 1 is punishable by a maximum sentence of 5 years' imprisonment, a fine of \$250,000 or the greater of twice the gross gain or twice the pecuniary loss, and 3 years' supervised release following any term of imprisonment.

B. Counts 2 through 10 are each punishable by a maximum sentence of not more than one year of imprisonment, a fine of \$100,000 fine or the greater of twice the gross gain or twice the gross loss, and not more than one year of supervised release following any term of imprisonment.

3. Elements of the Offense: To sustain the offense(s) to which the defendant is pleading guilty, the Government must prove the following elements beyond a reasonable doubt:

A. Count 1:

1. The conspiracy as charged in Count 1 existed;
2. The defendant knowingly and willfully became a member of the conspiracy with an intent to advance the conspiracy; and
3. One of the conspirators committed an overt act in an effort to advance a goal of the conspiracy.

B. Counts 2 through 4:

1. On or about the dates set forth in the indictment, the defendant introduced or delivered for introduction into interstate commerce, or caused to be introduced or delivered into interstate commerce, an adulterated drug;

2. The drug was adulterated in that its strength differed from the standard set forth in an official compendium.

C. Counts 5 through 10:

1. On or about the dates set forth in the indictment, the defendant did an act, or caused an act to be done to, with respect to a drug that resulted in the drug being adulterated in that its strength differed from the standard set forth in an official compendium;

2. While such drug was being held for sale after the shipment of a drug component in interstate commerce.

Part 2: General Provisions

4. **Sentencing Court's Discretion Within Statutory Range:** The defendant agrees and understands that: (A) the Court will use its discretion to fashion a sentence within the statutory range(s) set forth above; (B) the Court will consider the factors set forth in 18 U.S.C. § 3553(a) in determining the appropriate sentence within the statutory range(s); (C) the Court will also consult and take into account the United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G.") in determining the appropriate sentence within the statutory range(s); (D) the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature; (E) restitution may be imposed; (F) by pleading "Guilty" to more than one offense (Count), the Court may order the sentences to be served consecutively one after another; (G) the final determination concerning the applicable advisory guideline calculation, criminal history category, and advisory sentencing guideline range will be made by the Court; and (H) by pleading "Guilty," the Court

may impose the same punishment as if the defendant had plead "Not Guilty," had stood trial and been convicted by a jury.

5. **Sentencing Court Not Bound by Guidelines or Recommendations:** The defendant acknowledges that this Plea Agreement is governed by Federal Rule of Criminal Procedure 11(c)(1)(B) and that the determination of the defendant's sentence is within the discretion of the Court. The defendant understands that if the Court decides to impose a sentence higher or lower than any recommendation of either party, or determines a different advisory sentencing guideline range applies in this case, or decides to impose a sentence outside of the advisory sentencing guideline range for any reason, then the defendant will not be permitted to withdraw this plea of guilty for that reason and will be bound by this plea of guilty.

6. **Plea Agreement Based on Information Presently Known:** The defendant recognizes and understands that this Plea Agreement is based upon the information presently known to the Government. The Government agrees not to bring other federal charges against the defendant based on information currently known to the United States Attorney for the Southern District of Indiana and the United States Department of Justice, Consumer Protection Branch.

7. **No Protection From Prosecution for Unknown or Subsequent Offenses:** The defendant acknowledges and agrees that nothing in this agreement shall protect the defendant in any way from prosecution for any offense not specifically covered by this agreement, or not known to the United States Attorney for the Southern District of Indiana and the United States Department of Justice, Consumer Protection Branch at this time. The defendant further acknowledges and agrees that nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement.

8. **Rights Under Fed. R. Crim. P. 11(b):** The defendant understands that the Government has the right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath during the guilty plea colloquy. The defendant also understands that the defendant has the right: (A) to plead not guilty, or having already so pleaded, the right to persist in that plea; (B) to a jury trial; (C) to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceedings, including appeal; and (D) to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses. The defendant also understands that the Constitution guarantees the right to be considered for release until trial¹; and if found guilty of the charge(s), the right to appeal the conviction on such charge(s) to a higher court. The defendant understands that if the Court accepts this plea of guilty, the defendant waives all of these rights.

Part 3: Sentence of Imprisonment

9. **Sentencing Recommendation Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):** The parties have not agreed upon a specific sentence. The parties reserve the right to present evidence and arguments concerning what they believe to be the appropriate sentence in this matter.

A. **Government's Recommendation:** The Government has agreed to recommend a sentence within the advisory Sentencing Guidelines range determined by the Court.

10. **Placement:** The defendant requests that this Court recommend to the Federal Bureau of Prisons that the defendant serve any sentence of imprisonment imposed in this case at

¹Title 18, U.S.C. §§ 3141-3156, Release and Detention Pending Judicial Proceedings.

insert name of institution. The defendant acknowledges and understands that any recommendation by the Court is only a recommendation and does not bind the Federal Bureau of Prisons. The Government does/does not object to the defendant's requested recommendation.

11. Supervised Release: Both parties reserve the right to present evidence and arguments concerning whether the Court should impose a term of supervised release to follow any term of imprisonment in this case, the duration of any term of supervised release, and the terms and conditions of the release.

12. Conditions of Supervised Release: The parties understand and agree that the Court will determine which standard and special conditions of supervised release to apply in this case.

13. No Appeal of Supervised Release Term and Conditions: As discussed in greater detail below, the parties' reservation of the rights to present evidence and arguments to the Court concerning the length and conditions of supervised release is not intended to be inconsistent with the Waiver of Appeal specified below, which includes a waiver of the right to appeal to the length and conditions of the period of supervised release.

Part 4: Monetary Provisions and Forfeiture

14. Mandatory Special Assessment: The defendant will pay a total of \$325 on the date of sentencing or as ordered by the Court to the Clerk, United States District Court, which amount represents the mandatory special assessment fee imposed pursuant to 18 U.S.C. § 3013.

15. Fine: The parties are free to present arguments on the issue of the amount of fine to be imposed.

16. Obligation to Pay Financial Component of Sentence: If the defendant is unable to pay any financial component of the defendant's sentence on the date of sentencing,

then the defendant agrees that the payment of the financial component should be a condition of supervised release as well as an ordered payment through the Inmate Financial Responsibility Program of the U.S. Bureau of Prisons. The defendant has a continuing obligation to pay the financial component of the sentence. The defendant further agrees that as of the date of filing this Plea Agreement the defendant will provide all requested financial information, including privacy waivers, consents, and releases requested by the Government to access records to verify the defendant's financial disclosures, to the Government for use in the collection of any fines, restitution, and money judgments imposed by the Court and authorizes the Government to obtain credit reports relating to the defendant for use in the collection of any fines and restitution, and money judgments imposed by the Court. The defendant also authorizes the Government to inspect and copy all financial documents and information held by the United States Probation Office. If the defendant is ever incarcerated in connection with this case, the defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

Part 5: Factual Basis for Guilty Plea

17. The parties stipulate and agree that the following facts establish a factual basis for the defendant's plea(s) of guilty to the offense(s) set forth in Paragraph One, above, and that the Government would be able to establish the following facts beyond a reasonable doubt in the event this cause was to proceed to trial. The following information is only a summary of the Government's evidence. This Plea Agreement is not intended to foreclose the presentation of and the Government reserves the right to present additional evidence at the time of sentencing.

BEARDEN knowingly and willfully conspired with Paul Elmer to defraud the United States by interfering with and obstructing, through deceitful and dishonest means, the lawful

functions of the U.S. Food and Drug Administration (FDA), and corruptly obstructed, influenced, and impeded inspections by the FDA. It was the purpose of the conspiracy to prevent the loss of revenue that would result from customers' and FDA's knowledge of Pharmakon's having distributed numerous compounded drugs that were not the strength purported on the drugs' labeling.

BEARDEN and Elmer caused the distribution of compounded drugs to customers located both inside and outside of the State of Indiana. BEARDEN and Elmer caused these drugs to be tested for potency, and beginning at least as early as about July 2013, were notified that some of the drugs had failed potency testing. Despite knowledge of Pharmakon's repeated drug potency failures, BEARDEN and Elmer failed to notify customers and the FDA of the fact that they had distributed numerous drugs that were not the strength they purported to be, because they feared that Pharmakon's business would be negatively affected by recalling products from customers and because they sought to thwart FDA's efforts to learn about the extent of and causes of the potency failures.

During March 2014 and February 2016 FDA inspections, BEARDEN lied about, among other things, Pharmakon's never having received any out-of-specification drug potency test results. BEARDEN informed Elmer of her lies and misrepresentations during or shortly after the FDA's inspections, and he took no action to correct her and to inform the FDA of the extent of Pharmakon's drug potency failures.

BEARDEN failed to investigate the root causes of the drug potency failures and otherwise failed to make changes in Pharmakon's compounding operations to reduce the incidence of these failures. BEARDEN, together with Elmer, routinely elected not to inform health care providers that drugs they had received and administered to patients were not the

strength that they purported to be. Instead, under BEARDEN's and Elmer's supervision, Pharmakon continued to distribute under- and over-potent drugs, shipping these drugs before receiving the potency test results.

In furtherance of the conspiracy, and to accomplish its objects and purpose, BEARDEN committed or caused to be committed, in the Southern District of Indiana, and elsewhere, at least one of the following overt acts, among others:

- On or about March 6, 2014, BEARDEN falsely told FDA investigators that Pharmakon had not received any out-of-specification drug potency test results.
- On or about April 23, 2014, BEARDEN and Elmer falsely indicated to the FDA, in a signed letter, that Pharmakon's first notification that midazolam lot #s E0433735C and E1016227C had any issues, was on March 26, 2014 – when a hospital notified Pharmakon.
- On or about February 18, 2016, BEARDEN falsely told FDA investigators that Pharmakon had not received any out-of-specification potency test results before learning of the potency failure of morphine sulfate lot # E52418EV11C.

BEARDEN introduced adulterated drugs into interstate commerce, as well as caused the adulteration of drugs while such drugs were being held for sale after the shipment of a drug component in interstate commerce – as charged in Counts 2 through 10 of the Indictment.

Finally, BEARDEN admits all facts set forth within the General Allegations of the Indictment.

Part 6: Other Conditions

18. Background Information: The defendant acknowledges and understands that no limitation shall be placed upon the Court's consideration of information concerning the background, character, and conduct of the defendant for the purpose of imposing an appropriate

sentence. The defendant acknowledges and understands that the Government is not prohibited from providing information concerning background, character, and conduct of the defendant for the purpose of recommending or advocating an appropriate guideline calculation and sentence.

19. Good Behavior Requirement: The defendant agrees to fully comply with all conditions of release imposed by the Court during all stages of this case. If the defendant fails to fully comply with such conditions, then the Government may withdraw from this Agreement.

20. Compliance with Federal and State Laws: The defendant understands that the obligations of the Government in this Plea Agreement are expressly contingent upon the defendant abiding by federal and state laws.

Part 7: Sentencing Guideline Stipulations

21. Guideline Computations: Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties agree to the Stipulations below. The parties understand and agree that these Stipulations are binding on the parties but are only a recommendation to the Court and that the Court will determine the advisory sentencing guidelines applicable in this case. The parties agree that no stipulation regarding any factors in Chapter 4, Criminal History Category, of the Sentencing Guidelines has been made, and that such determination will be made by the Court. The 2017 version of the Sentencing Guidelines has been used by the parties to make the stipulations set forth below.

Count	Guideline cite	Levels
1: "Klein" conspiracy	2C1.1	12
1: 1505 obstruction	2J1.2	14
2-10: Misdemeanor adulteration	2N2.1	6
BASE OFFENSE LEVEL	3D1.2, 3D1.3(a) (grouping)	14

Adjustment	Guideline cite	Levels
Vulnerable victim	3A1.1	2
TOTAL OFFENSE LEVEL		16

A. Acceptance of Responsibility: To date, the defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for the defendant's criminal conduct. Based upon the defendant's willingness to accept a Plea Agreement and enter a plea of guilty to the criminal conduct noted in this agreement, the Government agrees that the defendant should receive a two (2) level reduction *provided* the defendant satisfies the criteria set forth in Guideline § 3E1.1(a) up to and including the time of sentencing. The defendant timely notified the Government of defendant's intention to enter a plea of guilty, thereby permitting the Government and the Court to allocate their resources efficiently. After the Defendant enters a plea of guilty, the Government intends to file a motion pursuant to U.S.S.G. § 3E1.1(b) requesting that the Court decrease the offense level by one (1) additional level. The parties reserve the right to present evidence and arguments concerning the defendant's acceptance of responsibility at the time of sentencing.

B. Final Offense Level: 13

Part 8: Cooperation

22. Cooperation: The defendant agrees to cooperate with the Government, including, but not limited to, providing complete, total, and truthful debriefings and interviews concerning any and all information regarding the defendant's involvement and that of others in the commission of any criminal offenses, without restriction to any charge presently pending against the defendant. The defendant also agrees to provide complete, total, and truthful testimony before grand juries and at trials, as considered necessary by the Government, concerning any and all information provided by the defendant during the course of the defendant's debriefings.

23. **Extent of Cooperation:** This cooperation agreement extends beyond the Southern District of Indiana to the extent any other judicial district agrees to accept the terms of this Plea Agreement. If the defendant has not completed the defendant's cooperation at the time of sentencing, the defendant recognizes that the defendant has a continuing obligation to cooperate thereafter. If at any time before or after sentencing the defendant refuses to fulfill the defendant's obligations to truthfully and completely cooperate as required by this Plea Agreement, then the defendant recognizes that the Government will consider that a breach of the Plea Agreement.

24. **Use of Cooperation Information Against Defendant:** The Government agrees that the complete and truthful information and testimony the defendant provides after the signing of this Plea Agreement will not be used to bring additional criminal charges against the defendant in the Southern District of Indiana beyond those alleged in the Indictment and described in this Plea Agreement, with the following three exceptions:

A. The Government may use the defendant's information and testimony to prove the charges contained in the Indictment in this case.

B. If the defendant were to testify falsely at any grand jury proceeding or trial, or make a false statement to a law enforcement officer, then the Government may use the defendant's information and testimony to prosecute the defendant for making false statements, obstruction, or perjury, whichever is appropriate.

C. The Government may use the defendant's information and testimony to prosecute the defendant for any conduct or action constituted a crime of violence under federal or state law.

The defendant agrees that other judicial districts may accept the terms of this Plea Agreement and require the defendant to cooperate with those districts under the same terms that as those specified in this Plea Agreement. The defendant understands that any judicial district that decides not to become a party to this Plea Agreement will not be bound by this Plea Agreement.

25. Use of Information at Sentencing: The Government agrees that any self-incriminating information the defendant might provide as a result of the cooperation required by the Plea Agreement, although available to the Court, will not be used against the defendant in determining the defendant's sentence. The defendant understands that any information given by the defendant as a result of the cooperation required by the terms of this Plea Agreement may be referred to by the presentence report preparer as an indication of the defendant's acceptance of responsibility and may be referred to as the defendant's version of the events leading to the charges. Pursuant to U.S.S.G. § 1B1.8, the provisions of this paragraph shall not be applied to restrict any such information that:

A. Was known to the United States Attorney for the Southern District of Indiana on or before March 10, 2017, which was the date of the defendant's proffer session and related Proffer Agreement;

B. Concerns the existence of prior convictions and sentences in determining the defendant's criminal history category and related issues;

C. Is used in a prosecution for perjury, obstruction, or giving a false statement; or

D. Is used in the event there is a breach of the cooperation provisions of this Plea Agreement.

26. **Amended Proffer Agreement Dated April 27, 2017:** Nothing in this Plea Agreement supersedes or removes any provision or protection contained in the defendant's Amended Proffer Agreement dated April 27, 2017, including the Government's ability to use the information derived directly or indirectly from the proffer session in the event of a breach or a rejection of the plea agreement.

27. **Substantial Assistance Departure Under U.S.S.G. § 5K1.1:** If the defendant continues to cooperate as set forth above, the Government will file a motion prior to sentencing pursuant to U.S.S.G. § 5K1.1 seeking a reduction in the defendant's offense level if the Government determines that the Defendant's cooperation with law enforcement authorities provided information that was of substantial assistance in the investigation and prosecution of another person who has committed a criminal offense.

Part 9: Waiver of Right to Appeal

28. **Direct Appeal:** The defendant understands that the defendant has a statutory right to appeal the conviction and sentence imposed and the manner in which the sentence was determined. Acknowledging this right, and in exchange for the concessions made by the Government in this Plea Agreement, the defendant expressly waives the defendant's right to appeal the conviction imposed in this case on any ground, including the right to appeal conferred by 18 U.S.C. § 3742. The defendant further agrees that, regardless of the defendant's criminal history category or how the sentence is calculated by the Court, the defendant expressly waives the defendant's right to appeal the sentence imposed in this case on any ground, including the right to appeal conferred by 18 U.S.C. § 3742. This waiver of appeal specifically includes all provisions of the guilty plea and sentence imposed, including the length and conditions supervised release and the amount of any fine.

29. **Collateral Attack:** Additionally, the defendant expressly agrees not to contest, or seek to modify, the defendant's conviction or sentence or the manner in which either was determined in any proceeding, including but not limited to, an action brought under 18 U.S.C. § 3582 or 28 U.S.C. § 2255. As concerns this Section 3582 waiver, should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to the defendant's offense(s) and explicitly make such an amendment retroactive, the Government agrees that it will not assert this waiver as a bar to the defendant filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2). However, if the defendant files such a motion, the Government reserves the right to oppose the motion on any other grounds, and reserves the right to assert this waiver as a bar to an appeal from the District Court's decision regarding the motion. As concerns the Section 2255 waiver, the waiver does not encompass claims, either on direct or collateral review, that the defendant received ineffective assistance of counsel.

30. **No Appeal of Supervised Release Term and Conditions:** The parties' reservation of the rights to present evidence and arguments in this Court concerning the length and conditions of supervised release is not intended to be inconsistent with the Waiver of Appeal specified above, which includes a waiver of the right to appeal to the length and conditions of the period of supervised release.

Part 10: Presentence Investigation Report

31. The defendant requests and consents to the commencement of a presentence investigation by probation officers of the United States District Court for purposes of preparing a Presentence Investigation Report at this time and prior to the entry of a formal plea of guilty.

32. The defendant further requests and consents to the review of the defendant's Presentence Investigation Report by a Judge, defendant's counsel, the defendant, and the Government at any time, including prior to entry of a formal plea of guilty.

Part 11: Immigration Consequences

33. The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which the defendant is pleading guilty. The defendant also recognizes that removal will not occur until service of any sentence imposed in this case has been completed. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including the defendant's attorney or the Court, can predict to a certainty the effect of the conviction in this case on the defendant's immigration status. The defendant nevertheless affirms that the defendant wants to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is the defendant's removal from the United States.

Part 12: Statement of the Defendant

34. By signing this document, the defendant acknowledges the following:

A. I have received a copy of the Indictment and have read and discussed it with my attorney. I believe and feel that I understand every accusation made against me in this case. I wish the Court to omit and consider as waived by me all readings of the Indictment/Information in open Court, and all further proceedings including my arraignment.

B. I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the Indictment, and believe and feel that my attorney

is fully informed as to all such matters. My attorney has since informed, counseled and advised me as to the nature and cause of every accusation against me and as to any possible defenses I might have in this case.

C. I have read the entire Plea Agreement and discussed it with my attorney.

D. I understand all the terms of the Plea Agreement and those terms correctly reflect the results of plea negotiations.

E. Except for the provisions of the Plea Agreement, no officer or agent of any branch of Government (federal, state or local), nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency, if I would plead "Guilty." I respectfully request that the Court consider in mitigation of punishment at the time of sentencing the fact that by voluntarily pleading "Guilty" I have saved the Government and the Court the expense and inconvenience of a trial. I understand that before it imposes sentence, the Court will address me personally and ask me if I wish to make a statement on my behalf and to present any information in mitigation of punishment.

F. I am fully satisfied with my attorney's representation during all phases of this case. My attorney has done all that anyone could do to counsel and assist me and that I fully understand the proceedings in this case against me.

G. I make no claim of innocence, and I am freely and voluntarily pleading guilty in this case.

H. I am pleading guilty as set forth in this Plea Agreement because I am guilty of the crime(s) to which I am entering my plea.

I. I understand that if convicted, a defendant who is not a United States Citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

J. My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within fourteen (14) days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and file a Notice of Appeal on my behalf if I ask that to be done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

K. My attorney has informed me, and I understand, that if I provide or cause to be provided materially false information to a judge, magistrate-judge, or probation office, then Section 3C1.1 of the Sentencing Guidelines allows the Court to impose a two-level increase in the offense level.

L. Trial of this cause is not yet scheduled. I request that any date be continued to permit the Court to consider this proposed guilty Plea Agreement. I further understand that any delay resulting from the Court's consideration of this proposed guilty Plea Agreement, up to and including the date on which the Court either accepts or rejects my guilty plea, will be excluded in computing the time within which trial of this cause must commence, pursuant to 18 U.S.C. § 3161(h)(1)(G).

Part 13: Certificate of Counsel

35. By signing this document, the defendant's attorney and counselor certifies as follows:

A. I have read and fully explained to the defendant all the accusations against the Defendant which are set forth in the Indictment in this case;

B. To the best of my knowledge and belief each statement set forth in the foregoing petition to enter plea of guilty and Plea Agreement is in all respects accurate and true;

C. The plea of "Guilty" as offered by the defendant in the foregoing petition to enter plea of guilty and Plea Agreement accords with my understanding of the facts as related to me by the defendant and is consistent with my advice to the defendant;

D. In my opinion, the defendant's waiver of all reading of the Indictment in open Court, and in all further proceedings, including arraignment as provided in Rule 10, Fed. R. Crim. P., is voluntarily and understandingly made; and I recommend to the Court that the waiver be accepted by the Court;

E. In my opinion, the plea of "Guilty" as offered by the defendant in the foregoing petition to enter plea of guilty and Plea Agreement is voluntarily and understandingly made and I recommend to the Court that the plea of "Guilty" be now accepted and entered on behalf of the defendant as requested in the foregoing petition to enter plea of guilty and Plea Agreement.


Part 14: Final Provision

36. **Complete Agreement:** The defendant acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce the defendant to plead guilty. This document is the complete and only Plea Agreement between the defendant and the United States Attorney for the Southern District of Indiana and is binding only on the parties to the Plea Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing, signed by all parties and filed with the Court, or on the record in open court.


Respectfully submitted,

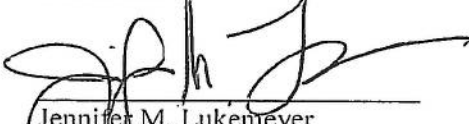
JOSH J. MINKLER
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~~~~  for
Winfield D. Ong
Chief, Criminal Division


Caprice R. Bearden
Defendant


Jennifer M. Lukemeyer
Counsel for Defendant

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