

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



UNITED STATES OF AMERICA

v.

22-CR-74-LJV

JOSEPH S. ZASO
a/k/a Joey Cracks,
a/k/a Sosa,
a/k/a JC,

Defendant.

PLEA AGREEMENT

The defendant, JOSEPH S. ZASO a/k/a Joey Cracks a/k/a Sosa a/k/a JC, 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 Counts 1, 2, and 3 of the Superseding Information which charge:

- a. In Count 1, a violation of Title 21, United States Code, Sections 846 and 841(b)(1)(A) (conspiracy to possess with intent to distribute and to distribute 400 grams or more of fentanyl), for which the mandatory minimum term of imprisonment is 15 years, and the maximum possible sentence is a term of imprisonment of life, a fine of \$20,000,000, a mandatory \$100 special assessment, and a term of supervised release of at least 10 years and up to life;
- b. In Count 2, a violation of Title 18, United States Code, Section 924(c)(1)(A)(i) (possession of a firearm in furtherance of drug trafficking), for which the mandatory minimum term of imprisonment is 5 years and the maximum possible sentence is a term of imprisonment

of life, such sentence to be imposed consecutively to any other term of imprisonment, a fine of \$250,000, a mandatory \$100 special assessment and a term of supervised release of 5 years; and

- c. In Count 3, a violation of Title 18, United States Code, Section 1001(a)(1) (concealment of material fact), for which the maximum possible sentence is a term of imprisonment of 5 years, a fine of \$250,000, a mandatory \$100 special assessment, and a term of supervised release of 3 years.
- d. 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, prior to the entry of the guilty pleas, the government has filed an Information (Docket 196) pursuant to Title 21, United States Code, Section 851 alleging the defendant's prior serious drug felony as the basis for the imposition of the enhanced penalties provided for in Title 21, United States Code, Sections 841(b)(1)(A) and 846. The defendant admits that he has a prior serious drug felony, specifically that on February 10, 2015, in the United States District Court for the Eastern District of Michigan, Docket Number 14-CR-20387, the defendant was convicted of violating Title 21, United States Code, Sections 841(a) and 841(b)(1)(B) (possession with intent to distribute 100 grams or more of heroin), and that the defendant served more than 12 months imprisonment and was released from the term of imprisonment within 15 years of the commencement of the instant offense, which subjects the defendant to the enhanced penalties provided for in Title 21, United States Code, Sections 841(b)(1)(A) and 846.

3. 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 12 years, without credit for time previously served on supervised release. As a consequence, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximums set forth in ¶ 1 of this agreement.

II. ELEMENTS AND FACTUAL BASIS

4. The defendant understands the nature of the offenses 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 crimes:

Count 1 – 21 U.S.C. § 846

- a. An agreement existed between two or more persons to commit a controlled substance felony offense;
- b. The defendant knew of the existence of the agreement;
- c. The defendant intended to participate in the unlawful agreement; and
- d. At least 400 grams of fentanyl was reasonably foreseeable to the defendant as being within the scope of the agreement.

Count 2 – 18 U.S.C. § 924(c)(1)(A)(i)

- a. The defendant committed a drug trafficking crime for which he could be prosecuted in a court of the United States; and
- b. The defendant knowingly possessed a firearm in furtherance of this drug trafficking crime.

Count 3 – 18 U.S.C. § 1001(a)(1)

- a. The defendant falsified, concealed, or covered up a fact that he had a duty to disclose;
- b. That the fact was material;
- c. That the defendant falsified, concealed, or covered up the fact by using a trick, scheme, or device;
- d. That the defendant acted knowingly and willfully; and
- e. That the fact pertained to a matter within the jurisdiction of the judicial branch of the United States government.

FACTUAL BASIS

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

Count 1- 21 U.S.C. § 846

- a. Beginning in or before September 2018, the exact date being unknown, and continuing until on or about May 26, 2022, in the Western District of New York, and elsewhere, the defendant, JOSEPH S. ZASO a/k/a Joey Cracks a/k/a Sosa a/k/a JC, did knowingly and intentionally combine, conspire, and agree together and with others, known and unknown, including Kyle N. Lewis, to commit the following offenses, that is: to possess with intent to distribute, and to distribute: (i) 1 kilogram or more of a mixture and substance containing heroin, a Schedule I controlled substance; and (ii) 400 grams or more of a mixture and substance containing N-phenyl-N-[1-(2-phenyl-ethyl)-4-piperidinyl] propanamide (fentanyl), a Schedule II controlled substance.
- b. During this time period, the defendant conspired to sell significant quantities of heroin and fentanyl in and around the Jamestown, New York area. The defendant was the source of supply for several Jamestown drug dealers. The defendant used a series of dealers and runners to effectuate his operation. The defendant admits that he was an organizer and leader of drug trafficking activity that involved five participants and was otherwise extensive, including Holly Berenguer, Denver Komenda, Richard Philbrick, Brandon Andino, Rocco Beardsley, Douglas Beardsley, and Bradley Knapp. During the conspiracy, the defendant obtained substantial income and resources

from these drug trafficking activities. The defendant admits that he used and maintained his residence at 12 Locust Street in Buffalo, New York for the purposes of his drug trafficking activities. *Jamestown*

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- c. The defendant admits that his relevant conduct as part of the conspiracy involved at least 22,000 grams of fentanyl.
 - i. From in or about 2019 to in or about 2021, the defendant provided heroin/fentanyl to Holly Berenguer, one of his co-conspirators, to sell. The defendant admits that he sourced Berenguer sizeable quantities of heroin/fentanyl including amounts of at least 250 grams or more. The defendant also admits that he and Berenguer used several individuals as testers for their heroin/fentanyl. Testers used the heroin/fentanyl to determine its strength and its suitability for sale.
 - ii. On or about September 5, 2021, law enforcement surveilled Berenguer travel from Jamestown to the defendant's residence at 48 Laurel Street, Buffalo, New York. Berenguer was observed entering the defendant's residence and leaving a short time later. Berenguer was stopped and arrested on her way back to Jamestown, and found to be in possession of approximately 296.1 grams of fentanyl which the defendant admits was fentanyl he supplied her.
 - iii. After Berenguer's arrest in September 2021, the defendant started supplying fentanyl for sale to Berenguer's roommate, Denver Komenda. The defendant supplied Komenda with fentanyl, on a weekly basis during Komenda's participation in the conspiracy.
 - iv. In late 2021, early 2022, Komenda introduced the defendant to Richard Philbrick. In 2022, the defendant stopped supplying Komenda with fentanyl because Komenda could not satisfy outstanding drug debts. After the defendant cut Komenda off, the defendant began supplying Philbrick directly with fentanyl for Philbrick to use and distribute.
- d. On May 26, 2022, members of the DEA executed search and arrest warrants against the defendant and his residence at 48 Laurel Street, Buffalo, New York. As a result of the search, law enforcement seized two digital scales, a National Grid bill in the defendant's name, an address book, money straps, a drug press, and the defendant's iPhone. The defendant admits his residence at 48 Laurel Street, Buffalo, New York was used and maintained for drug trafficking purposes.

- e. The defendant and the government agree that, based on the Drug Conversion Tables of the Sentencing Guidelines, the amounts of fentanyl and heroin involved in the defendant's relevant conduct encompassed in Count 1 of the Superseding Information which could be readily proven by the government against the defendant is the equivalent of at least 30,000 kilograms, but less than 90,000 kilograms of Converted Drug Weight.
- f. The defendant admits that during the course of the conspiracy described above, the defendant was not lawfully employed and was engaged in drug trafficking conduct as his livelihood.

Count 2- 18 U.S.C. § 924(c)(1)(A)(i)

- g. Between in or about April 2021 and in or about May 2022, the exact dates being unknown, in the Western District of New York, the defendant, JOSEPH S. ZASO a/k/a Joey Cracks a/k/a Sosa a/k/a JC, in furtherance of a drug trafficking crime for which the defendant may be prosecuted in a court of the United States, that is, a violation of Title 21, United States Code, Section 846, committed in the manner set forth in Paragraphs 5(a) through (f) *supra*, did knowingly possess firearms. The defendant possessed firearms during the course of and in furtherance of the conspiracy to protect his supply of narcotics, proceeds from drug sales, and to ensure drug transactions went smoothly. Specifically, in late April/early May 2022, the defendant possessed a firearm during a transaction at his home during which he provided Philbrick a quantity of fentanyl.

Count 3- 18 U.S.C. § 1001(a)(1)

- h. Between on or about February 5, 2019, and on or about May 5, 2021, in the Western District of New York, the defendant, JOSEPH S. ZASO a/k/a Joey Cracks a/k/a Sosa a/k/a JC, in a matter within the jurisdiction of the judicial branch of the Government of the United States, namely U.S. Probation, did knowingly and willfully conceal and cover up by trick and scheme a material fact, that is, that he was engaged in drug trafficking activities, by signing and submitting Monthly Reports to U.S. Probation that contained materially false information regarding his activities for the prior month, including his employment and financial information.
- i. On February 10, 2015, the defendant was sentenced in the Eastern District of Michigan to sixty (60) months in the custody of the United States Bureau of Prisons, followed by forty-eight (48) months of

supervised release after pleading guilty to a violation of 21 U.S.C. Sections 841(a)(1) and (b)(1)(B). On July 13, 2017, the defendant began his term of supervised release. On September 12, 2017, the Honorable Lawrence J. Vilaro, United States District Judge, accepted jurisdiction of the defendant's case in the Western District of New York. The defendant was placed on several supervised release conditions.

- j. The defendant admits that, as an individual under the supervision of U.S. Probation, he was required, as part of his mandatory conditions, to fill out and submit a "U.S. Probation Office Monthly Supervision Report" ("Monthly Report") to U.S. Probation by the fifth day of each month. The Monthly Reports record the activities of the individuals under supervision for the prior month, including their employment, gross monthly income, and bank account information. This information is material to the effective supervision of the individual under supervision and is relied upon by U.S. Probation. Each Monthly Report requires the person under supervision to certify that all information provided is complete and correct and contains a warning that false statements are prohibited and can be punished by prosecution, imprisonment, and a fine.
- k. From in or about September 2018, through in or about May 2021, the defendant was under the supervision of U.S. Probation in the Western District of New York, and was required to complete, certify, and submit Monthly Reports to U.S. Probation which included providing complete and correct information about his employment, gross monthly income, and bank accounts.
- l. Between on or about February 5, 2019, and on or about July 5, 2020, the defendant signed and submitted Monthly Reports to U.S. Probation in which he falsely reported his employment, specifically, that he was employed by W.T., doing property maintenance. The defendant admits he was never employed by W.T. Instead, the defendant's primary income was derived from the trafficking of heroin and fentanyl. The defendant admits that he asked W.T. to send letters to U.S. Probation which falsely stated that the defendant worked for W.T. when, in fact, he had never worked for W.T. The defendant admits that he asked W.T. to do this to get probation "off his case."
- m. Between on or about August 5, 2020, and on or about May 5, 2021, the defendant signed and submitted Monthly Reports to U.S. Probation in which he falsely concealed his income and the existence of bank accounts under his control in addition to lying about his employment. The defendant admits he did not report his actual income because most of it was derived from drug trafficking. The defendant also admits he

had bank accounts with Bank of America that he did not disclose to U.S. Probation.

- n. The above facts are set forth for the limited purpose of complying with Rule 11(b)(3) of the Federal Rules of Criminal Procedure, and are not intended to serve as a complete statement of the defendant's criminal conduct.

III. SENTENCING GUIDELINES

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

BASE OFFENSE LEVEL

7. Regarding Counts 1 and 3, the government and the defendant agree that Guidelines §§ 2D1.1(a)(5) and 2D1.1(c)(2) and 3D1.4 apply to the offenses of conviction and provide for a base offense level of **36**.

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

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

- a. The (2) two-level increase pursuant to Guidelines § 2D1.1(b)(2)(used or threatened violence);
- b. the (2) two-level increase pursuant to Guidelines § 2D1.1(b)(12) (maintaining a premises to manufacture or distribute a controlled substance); and
- c. the (2) two-level increase pursuant to Guidelines § 2D1.1(b)(16)(E) (offense committed as part of a pattern of criminal conduct engaged in as a livelihood).

U.S.S.G. CHAPTER 3 ADJUSTMENTS

9. The government and the defendant agree that the following adjustment to the base offense level applies:

- a. the (4) four-level increase pursuant to Guidelines § 3B1.1(a) (defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive).

COMBINED OFFENSE LEVEL

10. Based on ¶¶ 7, 8, and 9 of this agreement, and Guidelines § 3D1.1(a)(3) and 3D1.4, it is the understanding of the government and the defendant that the adjusted offense level for the offenses of conviction in Counts 1 and 3 is **46**.

ACCEPTANCE OF RESPONSIBILITY

11. 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 which would result in a total offense level of **43** for Counts 1 and 3.

CRIMINAL HISTORY CATEGORY

12. It is the understanding of the government and the defendant that the defendant's criminal history category is IV. 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 pleas of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES APPLICATION, CALCULATIONS, AND IMPACT

13. It is the understanding of the government and the defendant that, for Counts 1 and 3, with a total offense level of **43** and criminal history category of **IV**, and taking into account the applicable statutory minimum penalties, the defendant's sentencing range would be a term of imprisonment of **life**, a fine of **\$50,000 to \$20,000,000**, and a period of supervised release of **10 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 for both counts of conviction.

14. The government and the defendant agree that Guidelines § 2K2.4(b) applies to the offense of conviction in Count 2 and provides that the Guidelines sentence is the minimum term of imprisonment required by statute. The applicable statute, Title 18, United States Code, Section 924(c)(1)(A)(i), requires a term of imprisonment of not less than **5 years** to be imposed consecutively to any other sentence of imprisonment, a fine of up to **\$250,000**, and a term of supervised release of **2 to 5 years**.

15. Based on the above, it is the understanding of the government and the defendant that the aggregate sentencing range for defendant is a term of imprisonment of **life** (60 months on Count 2 to run consecutive to a term of imprisonment of life on Counts 1 and 3), a fine of **\$50,000 to \$20,000,000**, and a term of supervised release of **10 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 for all counts of conviction.

16. 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 sentence of imprisonment between **240 and 300 months** 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 pleas 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.

17. The defendant understands that, except as set forth in Paragraph 16, 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 pleas of guilty based on the sentence imposed by the Court.

18. 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.

19. The defendant understands that 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 pleas of guilty based on the sentence imposed by the Court.

20. In the event the Court contemplates any Guidelines adjustments, departures, or calculations different from those agreed to by the parties above, the parties reserve the right to answer any inquiries by the Court concerning the same.

IV. STATUTE OF LIMITATIONS

21. In the event the defendant's pleas of guilty are withdrawn, or convictions 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 federal criminal offense 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 pleas or vacating of the convictions becomes final.

V. REMOVAL

22. The defendant represents that he is a citizen of the United States. However, if the defendant is not a citizen of the United States, the defendant understands that, if

convicted, the defendant may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

VI. GOVERNMENT RIGHTS AND RESERVATIONS

23. 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 offenses charged, the circumstances surrounding the charges 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 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.

24. At sentencing, the government will move to dismiss the pending counts of the Second Superseding Indictment against the defendant.

25. 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.

VII. APPEAL RIGHTS

26. 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 a sentence of imprisonment between **240 and 300 months, a fine of \$50,000 to \$20,000,000 and a period of supervised release of 10 years**, 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 its right to argue the correctness of the defendant's sentence.

27. The defendant understands that by agreeing not to 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.

28. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than a sentence of imprisonment between **240 and 300 months, a fine of \$50,000 to \$20,000,000, and a period of supervised release of 10 years**, 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.

VIII. FORFEITURE PROVISIONS

29. As a condition of the plea, the defendant agrees not to contest any forfeiture or abandonment proceeding that may be brought by the government and agrees to immediately criminally forfeit all of the defendant's right, title and interest to any and all property which is subject to forfeiture pursuant to Title 21, United States Code, Sections 853(a)(1), 853(a)(2), and 853(p) which is in the possession and control of the defendant or the defendant's nominees. That property includes:

MONETARY JUDGMENT:

The sum of all two hundred thirty-five thousand, one hundred twenty dollars (\$235,120.00) in United States currency that represents proceeds that defendant obtained from his involvement in the criminal conduct, which if not readily available will become a monetary judgment and will serve as a lien against the defendant's property, wherever situated, with interest to accrue at the prevailing rate per annum until fully satisfied in the event this amount is not located.

30. The defendant also agrees that the monetary amount (\$235,120.00) listed above is properly forfeitable to the government pursuant to Title 21, United States Code, Section 853 and based upon the acts of the defendant, it is no longer available for forfeiture, and thus the government has the right to seek forfeiture of substitute assets of the defendant pursuant Title 21, United States Code, Section 853(p). The defendant understands and agrees that the Court, at the time of sentencing, will order a Forfeiture Money Judgment which is due and payable in full immediately and subject to immediate enforcement by the government.

31. All payments made by the defendant toward the Forfeiture Money Judgment shall be made by money order, certified check and/or official bank check, payable to the "Drug Enforcement Administration" The defendant shall cause said payment(s) to be hand delivered or sent by overnight mail delivery to the United States Attorney's Office, Western District of New York, Asset Recovery Division, with the criminal docket number noted on the face of the instrument. The defendant consents to the restraint of all payments made toward the Forfeiture Money Judgment. The defendant also waives all statutory deadlines, including but not limited to deadlines set forth in Title 21, United States Code, Section 983. The defendant agrees to fully assist the government in effectuating the payment of the Forfeiture Money Judgment, by among other things, executing any documents necessary to effectuate any transfer of title to the government. The defendant agrees that any funds and assets in which the defendant has an interest, which have been seized or restrained by the government or law enforcement as part of the investigation underlying this plea agreement, will be used to offset any forfeiture money judgment imposed pursuant to this plea agreement, or to satisfy any debts owed by the defendant to the government and/or agencies thereof.

32. The defendant further acknowledges that if the defendant cannot pay the full amount of the Forfeiture Money Judgment immediately, the defendant agrees that the conditions of Title 21, United States Code, Section 853(p) have been satisfied, and thus the government has the right to seek forfeiture of substitute assets of the defendant pursuant to Title 21, United States Code, Section 853(p) and Federal Rule of Criminal Procedure 32.2(e)(1)(B).

33. The defendant agrees to fully assist the government in the identification and recovery of any property of the defendant to satisfy such judgment. The defendant agrees to the forfeiture of such property and will take whatever steps are necessary to pass clear title to the government, including, but not limited to, surrender of title and execution of any documents necessary to transfer the defendant's interest to the government. The defendant agrees to waive notice and not to object to any motions made by the government for substitute assets. Further, the defendant consents to the entry of any such order of forfeiture for substitute assets.

34. The defendant understands and agrees that unless the Forfeiture Money Judgment is paid in full immediately, federal law allows agencies to refer debts to the United States Department of the Treasury for the purpose of collecting debts through the Treasury Offset Program ("TOP"). Under this program, the Department of the Treasury will reduce or withhold any of the defendant's eligible Federal payments by the amount of the defendant's debt. This "offset" process is authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 and the Internal Revenue Code. The government hereby provides the defendant notice that 60 days after sentencing, the government will refer the outstanding Forfeiture Money Judgment to TOP for the offset of any pending federal payments and waives any further notice. The defendant agrees not to object or challenge any offset taken through TOP.

35. The defendant agrees not to file a claim or petition seeking remission or contesting the forfeiture of any property against which the government seeks to satisfy the

Forfeiture Monetary Judgment in any administrative or judicial (civil or criminal) proceeding. The defendant further agrees not to assist any person or entity in the filing of any claim or petition seeking remission or contesting the forfeiture of any property against which the government seeks to satisfy the Forfeiture Money Judgment in any administrative or judicial (civil or criminal) forfeiture proceeding.

36. To the extent that the defendant has an interest, the defendant authorizes the District Court Clerk to release any funds posted as security for the defendant's appearance bond in this case, when no restitution has been ordered, which funds shall be applied to satisfy the Forfeiture Money Judgment.

37. After the acceptance of the defendant's guilty pleas, and pursuant to Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure, the Court will issue a Preliminary Order of Forfeiture for the property listed above. The defendant hereby waives any right to notice of such Preliminary Order of Forfeiture. The defendant further consents and agrees that the Preliminary Order of Forfeiture and a Final Order of Forfeiture shall issue and become final as to the defendant prior to sentencing and agrees that it shall be made part of the defendant's sentence and included in the judgment pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure. The defendant hereby waives any right to notice of such Preliminary Order of Forfeiture. The defendant further agrees to waive any time restrictions or requirements as provided in Title 18, United States Code, Section 983, any notice provisions in Rules 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant knowingly and voluntarily waives his right to any required

notice concerning the forfeiture of any of the property forfeited hereunder, including notice set forth in an indictment, information or administrative notice. The defendant acknowledges that the defendant understands that the forfeiture of property is part of the sentence that may be imposed in this case and waives any failure by the Court to advise the defendant of this, pursuant to Rule 11(b)(1)(J), at the time the guilty pleas are accepted. Forfeiture of the defendant's property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

38. The defendant knowingly, intelligently, and voluntarily waives his right to a jury trial on the forfeiture of the property. The defendant knowingly, intelligently, and voluntarily waives all constitutional, legal and equitable defenses to the forfeiture of the property in any proceeding, whether constitutional or statutory, including but not limited to, any defenses based on principles of double jeopardy, as to this criminal proceeding or any related civil or administrative proceeding, the Ex Post Facto clause of the Constitution, any applicable statute of limitations, venue, or any defense under the Eighth Amendment, including a claim of excessive fines.

39. The defendant agrees that the above-described property is subject to forfeiture and waives any and all statutory and constitutional rights, including but not limited to time restrictions and notice provisions with respect to the final disposition or forfeiture of the above property.

40. The defendant further agrees that the forfeiture of the aforementioned property as authorized herein shall not be deemed an alteration of the defendant's sentence. Forfeiture of the defendant's property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, any income taxes or any other penalty that the Court may impose upon the defendant in addition to forfeiture and shall survive bankruptcy.

41. The defendant agrees that in the event this plea agreement is voided for any reason, the agreement for forfeiture, abandonment and disposition of the currency survives and shall be given full force and effect. The failure of the defendant to forfeit any property as required under this agreement, including the failure of the defendant to execute any document to accomplish the same on timely notice to do so, may constitute a breach of this agreement.

42. The defendant agrees that if, for any reason, in any pleadings before the Court or any order of the Court, including but not limited to, the Preliminary and/or Final Order of Forfeiture and the Judgment and Commitment, the government fails to properly identify an item to be forfeited, fails to include any item that is forfeitable under the applicable forfeiture statute in this case or includes a clerical or technical error, the defendant will consent and not oppose any effort by the government to amend, correct or add to the description/list of items subject to forfeiture in this case. Additionally, to the extent necessary and at the discretion of the United States Attorney's Office, the defendant further agrees in the alternative, to the abandonment or civil forfeiture of any items that were excluded from the original description of items to be forfeited. Finally, if not specially identified or listed above, the defendant agrees to the abandonment of any and all cellular phones, computers and electronic equipment seized by law enforcement in this case.

VIII. TOTAL AGREEMENT AND AFFIRMATIONS

32. This plea agreement represents the total agreement between the defendant, JOSEPH S. ZASO, 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.

TRINI E. ROSS
United States Attorney
Western District of New York

BY:



JOSHUA A. VIOLANTI
Assistant United States Attorney


Dated: May 23, 2024

I have read this agreement, which consists of pages 1 through 21. I have had a full opportunity to discuss this agreement with my attorney, Maurice Verrillo, Esq. I agree that it represents the total agreement reached between myself 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 pleas of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.



JOSEPH S. ZASO
Defendant

Dated: May 23, 2024



MAURICE VERRILLO, ESQ.
Attorney for the Defendant

Dated: May 23, 2024