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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 UNITED STATES OF AMERICA,  
10 Plaintiff,  
11 v.  
12 FLOR SILEING CHAM,  
13 Defendant.

Case No. *23cr 1926-JLS*  
PLEA AGREEMENT

15  
16 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,  
17 through its counsel, Tara K. McGrath, United States Attorney, and  
18 Nicholas W. Pilchak, Assistant U.S. Attorney, and Defendant, FLOR SILEING  
19 CHAM, through her counsel, Jesus Mosqueda, as follows:

20 **I**

21 **THE PLEA**

22 Defendant agrees to waive indictment and plead guilty to a criminal  
23 Information, charging Defendant with Introduction of Misbranded Drugs  
24 in Interstate Commerce, in violation of Title 21, United States Code,  
25 Sections 331(a) and 333(a)(1).

26  
27  
28 Def. Initials F.C

1 II

2 NATURE OF THE OFFENSE

3 **A. ELEMENTS EXPLAINED**

4 The offense to which Defendant is pleading guilty has the following  
5 elements:

- 6 1. The defendant introduced in interstate commerce;  
7 2. A drug or device;  
8 3. That was adulterated or misbranded.

9 **B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS**

10 Defendant has fully discussed the facts of this case with defense  
11 counsel. Defendant has committed each of the elements of the crime,  
12 and admits that there is a factual basis for this guilty plea. The  
13 following facts are true and undisputed:

- 14  
15 1. Defendant operated a beauty spa in Mexicali, Mexico. Between  
16 at least November 2016 and February 2020, Defendant  
17 repeatedly smuggled injectable botulinum toxin and lip  
18 fillers from Mexico into the United States.  
19 2. Specifically, Defendant smuggled Xeomeen and the injectable  
20 lip filler Probcel, neither of which is approved by the U.S.  
21 Food and Drug Administration for use in the United States.  
22 These drugs and devices were also misbranded, in that they  
23 were not properly labeled for use in the United States,  
24 because they were generally labeled in Spanish.  
25 3. Defendant sold and administered some of the smuggled drugs  
26 and devices directly to customers inside the United States.  
27 She also sold multiple shipments of hundreds of units of the  
28 unapproved drugs and devices to Dr. Tien Tan Vo, charged  
elsewhere, in exchange for tens of thousands of dollars.  
Defendant admits that the drugs and devices sold to Dr. Vo  
were introduced in international and interstate commerce.  
4. Defendant separately sold a total of \$6,485 of misbranded and  
unapproved drugs and devices to an undercover agent of the  
Department of Homeland Security. These unapproved drugs  
included counterfeit Viagra and purported lip fillers in pre-  
loaded syringes contained in vacuum-sealed kitchen bags.

1 III

2 PENALTIES

3 The crime to which Defendant is pleading guilty carries the  
4 following penalties:

- 5 A. a maximum of 1 year in prison;  
6 B. a maximum fine of \$1,000 or twice the pecuniary gain or loss;  
7 C. a mandatory special assessment of \$25; and  
8 D. a term of supervised release of up to 1 year. Failure to comply with  
9 any condition of supervised release may result in revocation  
10 of supervised release, requiring Defendant to serve in  
11 prison, upon revocation, all or part of the statutory maximum  
12 term of supervised release.

13 IV

14 DEFENDANT'S WAIVER OF TRIAL RIGHTS AND UNDERSTANDING OF CONSEQUENCES

15 This guilty plea waives Defendant's right at trial to:

- 16 A. Continue to plead not guilty and require the Government to  
17 prove the elements of the crime beyond a reasonable doubt;  
18 B. A speedy and public trial by jury;  
19 C. The assistance of counsel at all stages;  
20 D. Confront and cross-examine adverse witnesses;  
21 E. Testify and present evidence and to have witnesses testify on  
22 behalf of Defendant; and,  
23 F. Not testify or have any adverse inferences drawn from the  
24 failure to testify.

25 V

26 DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE  
27 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

28 Any information establishing the factual innocence of Defendant  
known to the undersigned prosecutor in this case has been turned over  
to Defendant. The United States will continue to provide such  
information establishing the factual innocence of Defendant.



1 If this case proceeded to trial, the United States would be  
2 required to provide impeachment information for its witnesses. In  
3 addition, if Defendant raised an affirmative defense, the United States  
4 would be required to provide information in its possession that supports  
5 such a defense. By pleading guilty Defendant will not be provided this  
6 information, if any, and Defendant waives any right to this information.  
7 Defendant will not attempt to withdraw the guilty plea or to file a  
8 collateral attack based on the existence of this information.

9 VI

10 **DEFENDANT'S REPRESENTATION THAT GUILTY**  
11 **PLEA IS KNOWING AND VOLUNTARY**

12 Defendant represents that:

- 13 A. Defendant has had a full opportunity to discuss all the facts  
14 and circumstances of this case with defense counsel and has  
15 a clear understanding of the charges and the consequences of  
16 this plea. By pleading guilty, Defendant may be giving up,  
17 and rendered ineligible to receive, valuable government  
18 benefits and civic rights, such as the right to vote, the  
19 right to possess a firearm, the right to hold office, and the  
20 right to serve on a jury. The conviction in this case may  
21 subject Defendant to various collateral consequences,  
22 including but not limited to revocation of probation, parole,  
23 or supervised release in another case; debarment from  
24 government contracting; and suspension or revocation of a  
25 professional license, none of which can serve as grounds to  
26 withdraw Defendant's guilty plea.
- 27 B. No one has made any promises or offered any rewards in return  
28 for this guilty plea, other than those contained in this  
agreement or otherwise disclosed to the Court.
- C. No one has threatened Defendant or Defendant's family to  
induce this guilty plea.
- D. Defendant is pleading guilty because Defendant is guilty and  
for no other reason.

VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF CALIFORNIA**

This plea agreement is limited to the United States Attorney's Office for the Southern District of California and cannot bind any other authorities in any type of matter, although the United States will bring this plea agreement to the attention of other authorities if requested by Defendant.

VIII

**APPLICABILITY OF SENTENCING GUIDELINES**

The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). In imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory. The Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Nothing in this plea agreement limits the United States' duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

IX

**SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The sentence is within the sole discretion of the sentencing judge who may impose the maximum sentence provided by statute. It is uncertain at this time what Defendant's sentence will be. The United States has not made and will not make any representation about what sentence Defendant will receive. Any estimate of the probable sentence by

1 defense counsel is not a promise and is not binding on the Court. Any  
2 recommendation by the United States at sentencing also is not binding on  
3 the Court. If the sentencing judge does not follow any of the parties'  
4 sentencing recommendations, Defendant will not withdraw the plea.

5 X

6 **PARTIES' SENTENCING RECOMMENDATIONS**

7 **A. SENTENCING GUIDELINE CALCULATIONS**

8 Although the Guidelines are only advisory and just one factor the  
9 Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence,  
10 the parties will jointly recommend the following Base Offense Level,  
11 Specific Offense Characteristics, Adjustments, and Departures for this  
12 Class A misdemeanor (see USSG § 1B1.9):

- |    |   |           |
|----|---|-----------|
| 13 | 1. Base Offense Level, § 2B1.1(a)(2), 2N2.1(c)(1) | 6         |
| 14 | 2. Loss >\$40,000, § 2B1.1(b)(1)(D)               | +6        |
| 15 | 3. Acceptance of Responsibility, §§ 3E1.1(a)      | -2        |
| 16 | 4. Zero-Point Offender, § 4C1.1                   | <u>-2</u> |
| 17 |   | 8         |

18 **B. ACCEPTANCE OF RESPONSIBILITY**

19 Despite paragraph A above, the United States need not recommend an  
20 adjustment for Acceptance of Responsibility if Defendant engages in  
21 conduct inconsistent with acceptance of responsibility including, but  
22 not limited to, the following:

- 23 1. Fails to truthfully admit a complete factual basis as  
24 stated in the plea at the time the plea is entered, or  
25 falsely denies, or makes a statement inconsistent with,  
26 the factual basis set forth in this agreement;
- 27 2. Falsely denies prior criminal conduct or convictions;
- 28 3. Is untruthful with the United States, the Court or  
probation officer;



- 4. Breaches this plea agreement in any way; or
- 5. Transfers or conceals property (or properties) that would otherwise be available for payment of restitution.

**C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS INCLUDING THOSE UNDER 18 U.S.C. § 3553**

Defendant may recommend additional downward adjustments, departures, including Criminal History departures under USSG § 4A1.3, or sentence reductions under 18 U.S.C. § 3553. The United States may oppose any such adjustments or departures not set out above.

**D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY**

The parties have no agreement as to Defendant's Criminal History Category.

**E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION**

The facts in the "factual basis" paragraph of this agreement are true and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

**F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY**

The parties will jointly recommend that defendant be sentenced to three years of probation in lieu of custody.

**G. SPECIAL ASSESSMENT / FINE**

**1. Special Assessment**

The parties will jointly recommend that defendant pay a special assessment in the amount of \$25.00 to be paid forthwith at time of sentencing. Defendant shall pay the special assessment through the office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

**2. Fine**

The parties will jointly recommend a fine of \$6,485.00.

1           **H.     SUPERVISED RELEASE & PROBATION**

2           If the Court imposes a term of probation or supervised release,  
3 Defendant agrees that she will not later seek to reduce or terminate  
4 early the term of probation or supervised release until he has served  
5 at least 2/3 of his term of supervised release or probation and has  
6 fully paid and satisfied any special assessments, fine, criminal  
7 forfeiture judgment and restitution judgment imposed by the Court.

8                           **XI**

9                   **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

10          Defendant waives (gives up) all rights to appeal and to collaterally  
11 attack every aspect of the conviction and sentence, including any  
12 forfeiture or restitution order. The only exception is that Defendant  
13 may collaterally attack the conviction or sentence on the basis that  
14 Defendant received ineffective assistance of counsel. Defendant also  
15 explicitly waives any challenge to the constitutionality of the statutes  
16 to which Defendant is pleading. If Defendant appeals, the United States  
17 may support on appeal the sentence or restitution order actually imposed.

18                           **XII**

19                   **BREACH OF THE PLEA AGREEMENT**

20          Defendant and Defendant's attorney know the terms of this agreement  
21 and shall raise, before the sentencing hearing is complete, any claim  
22 that the United States has not complied with this agreement. Otherwise,  
23 such claims shall be deemed waived (that is, deliberately not raised  
24 despite awareness that the claim could be raised), cannot later be made  
25 to any court, and if later made to a court, shall constitute a breach  
26 of this agreement.



1 Defendant breaches this agreement if Defendant violates or fails  
2 to perform any obligation under this agreement. The following are non-  
3 exhaustive examples of acts constituting a breach:

- 4 1. Failing to plead guilty pursuant to this agreement;
- 5 2. Failing to fully accept responsibility as established in  
6 Section X, paragraph B, above;
- 7 3. Failing to appear in court;
- 8 4. Attempting to withdraw the plea;
- 9 5. Failing to abide by any court order related to this case;
- 10 6. Appealing (which occurs if a notice of appeal is filed)  
11 or collaterally attacking the conviction or sentence in  
12 violation of Section XI of this plea agreement; or
7. Engaging in additional criminal conduct from the time of  
arrest until the time of sentencing.

13 If Defendant breaches this plea agreement, Defendant will not be  
14 able to enforce any provisions, and the United States will be relieved  
15 of all its obligations under this plea agreement. For example, the  
16 United States may proceed to sentencing but recommend a different  
17 sentence than what it agreed to recommend above. Or the United States  
18 may pursue any charges including those that were dismissed, promised to  
19 be dismissed, or not filed as a result of this agreement (Defendant  
20 agrees that any statute of limitations relating to such charges is  
21 tolled indefinitely as of the date all parties have signed this  
22 agreement; Defendant also waives any double jeopardy defense to such  
23 charges). In addition, the United States may move to set aside  
24 Defendant's guilty plea. Defendant may not withdraw the guilty plea  
25 based on the United States' pursuit of remedies for Defendant's breach.

26 Additionally, if Defendant breaches this plea agreement: (i) any  
27 statements made by Defendant, under oath, at the guilty plea hearing  
28

1 (before either a Magistrate Judge or a District Judge); (ii) the factual  
2 basis statement in Section II.B in this agreement; and (iii) any  
3 evidence derived from such statements, are admissible against Defendant  
4 in any prosecution of, or any action against, Defendant. This includes  
5 the prosecution of the charge that is the subject of this plea agreement  
6 or any charge(s) that the United States agreed to dismiss or not file  
7 as part of this agreement, but later pursues because of a breach by  
8 the Defendant. Additionally, Defendant knowingly, voluntarily, and  
9 intelligently waives any argument that the statements and any evidence  
10 derived from the statements should be suppressed, cannot be used by the  
11 United States, or are inadmissible under the United States Constitution,  
12 any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of  
13 the Federal Rules of Criminal Procedure, and any other federal rule.

14 **XIII**

15 **CONTENTS AND MODIFICATION OF AGREEMENT**

16 This plea agreement embodies the entire agreement between the  
17 parties and supersedes any other agreement, written or oral. No  
18 modification of this plea agreement shall be effective unless in writing  
19 signed by all parties.

20 **XIV**

21 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

22 By signing this agreement, Defendant certifies that Defendant has  
23 read it (or that it has been read to Defendant in Defendant's native  
24 language). Defendant has discussed the terms of this agreement with  
25 defense counsel and fully understands its meaning and effect.

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XV

**DEFENDANT SATISFIED WITH COUNSEL**

Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and Defendant's counsel did not advise Defendant about what to say in this regard.

TARA K. MCGRATH  
United States Attorney



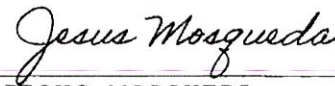
NICHOLAS W. PILCHAK  
Assistant U.S. Attorney

11/15/2023

DATED

11-15-23

DATED

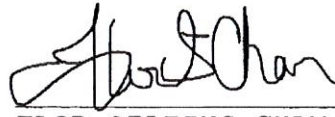


JESUS MOSQUEDA  
Defense Counsel

**IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE ARE TRUE.**

11-14-23

DATED



FLOR SILEING CHAM  
Defendant

Approved by:



W. Mark Conover  
Assistant U.S. Attorney