



U.S. Department of Justice

United States Attorney
District of New Jersey

270 Broad Street, 7th floor
Newark, New Jersey 07102

973-645-2700

2018R00192

March 18, 2022

Robert J. Cleary, Esq.
Proskauer Rose LLC
Eleven Times Square
New York, NY 10036-8299

Re: Plea Agreement with Dunn Meadow LLC

Dear Mr. Cleary:

This letter sets forth the plea agreement between the United States Attorney's Office for the District of New Jersey (the "United States") and your client, Dunn Meadow LLC ("Dunn Meadow"). The offer of the United States to enter into this plea agreement will expire on April 1, 2022, if a signed copy is not received by the United States on or before that date.

Charges

Conditioned on the understandings specified below, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States will accept a guilty plea from Dunn Meadow to a two-count Information, to be filed in the U.S. District Court for the District of New Jersey (the "Court"), which charges Dunn Meadow with: (1) in Count One, conspiracy to knowingly distribute and to knowingly dispense, outside the usual course of professional practice and not for a legitimate medical purpose, 400 grams or more of a mixture and substance containing a detectable amount of fentanyl, a Schedule II controlled substance, contrary to 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vi), and 21 C.F.R. § 1306.04, in violation of 21 U.S.C. § 846; and (2) in Count Two, conspiracy to violate the Federal Anti-Kickback Statute, contrary to 42 U.S.C. § 1320a-7b(b)(2)(A), in violation of 18 U.S.C. § 371.

If Dunn Meadow enters a guilty plea and a judgment of conviction is entered that is consistent with the terms of the agreed disposition as defined in this plea agreement, and if Dunn Meadow otherwise fully complies with all of the terms of this agreement, the United States will not initiate any further criminal charges against Dunn Meadow for (1) dispensing or distributing

controlled substances, including fentanyl, outside the usual course of professional practice and not for a legitimate medical purpose, and conspiring to do so, from in or about 2015 to in or about 2021; or (2) knowingly and willfully offering or paying any remuneration directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person to refer an individual to Dunn Meadow for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, and conspiring to do so, from in or about 2015 to in or about 2021.

However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result does not remain in full force and effect, Dunn Meadow agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations (as tolled pursuant to the agreement relating to the statute of limitations executed by Dunn Meadow on January 27, 2021) on the date this agreement is signed by Dunn Meadow may be commenced against Dunn Meadow, notwithstanding the expiration of the limitations period after Dunn Meadow signs the agreement.

The United States expressly reserves the right to prosecute any individual, including but not limited to present and former owners, officers, directors, employees, and agents of Dunn Meadow, in connection with the conduct encompassed by this plea agreement or known to the United States.

Sentencing

The violation of 21 U.S.C. § 846 to which Dunn Meadow agrees to plead guilty carries a maximum term of probation of five years, and a maximum fine equal to the greater of: (1) \$50,000,000 or (2) twice the gross profits or other proceeds to Dunn Meadow.

The violation of 18 U.S.C. § 371 to which Dunn Meadow agrees to plead guilty carries a maximum term of probation of five years, and a maximum fine equal to the greater of: (1) \$500,000, or (2) twice the gross amount of any pecuniary gain that any persons derived from the offense, or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

Further, in addition to imposing any other penalty on Dunn Meadow, the sentencing judge: (1) will order Dunn Meadow to pay an assessment of \$400 per count pursuant to Title 18, United States Code, Section 3013, which assessment must be paid by the date of sentencing; and (2) may order Dunn Meadow to pay restitution pursuant to Title 18, United States Code, Section 3663.

The parties agree that, pursuant to Section 8C2.2 of the United States Sentencing Guidelines ("U.S.S.G"), it is readily ascertainable that Dunn Meadow cannot and is not likely to become able to pay the full amount of restitution owed. See U.S.S.G. § 8C2.2(a). Hence, determining the guideline fine range applicable to Dunn Meadow is unnecessary.

Agreed Disposition

The United States and Dunn Meadow agree that, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the appropriate disposition of this case is as follows (the "Agreed Disposition"):

- (1) **Restitution:** Pursuant to U.S.S.G. § 8B1.1(a) and 18 U.S.C. § 3663(a)(3), as a result of engaging in a conspiracy to violate the Federal Anti-Kickback Statute, Dunn Meadow agrees that it owes restitution to the United States in the amount of \$4,498,920.82. An initial restitution payment of \$225,000 shall be paid on or before the date of sentencing.
- (2) **Fine:** Pursuant to U.S.S.G. § 8C3.3(a), the imposition of a fine would impair Dunn Meadow's ability to make restitution in this matter. Therefore, no fine shall be imposed.
- (3) **Probation:** Pursuant to U.S.S.G. § 8D1.1, Dunn Meadow shall be subject to a term of probation of two years. As a condition of probation, Dunn Meadow will be ordered to pay restitution as set forth in this agreement. Dunn Meadow further agrees as a condition of probation, it will not dispense any controlled substances as defined by the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and related regulations.
- (4) **Voluntary Surrender of Controlled Substance Registrations:**
 - a. In anticipation of entering into this agreement, on June 25, 2021, Dunn Meadow surrendered its U.S. Drug Enforcement Administration ("DEA") Certificate of Registration, No. FD5132624.
 - b. Within one week of the entry of Dunn Meadow's plea in this matter, Dunn Meadow shall surrender any and all registrations, licenses, or certificates issued by any state or local government agency to Dunn Meadow that grant Dunn Meadow authority to purchase, distribute, or dispense controlled substances.

- c. Dunn Meadow shall not apply for or attempt to obtain any registration, license, or certificate from the DEA or any state or local government agency that would grant Dunn Meadow authority to purchase, distribute, or dispense controlled substances.

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States and Dunn Meadow agree that the Agreed Disposition is reasonable, and the appropriate disposition of this case. Accordingly, pursuant to Rule 11(c)(1)(C), if the Court accepts this plea agreement, the Court will be bound to impose a sentence consistent with the Agreed Disposition. If, however, the sentencing judge rejects this plea agreement and the Agreed Disposition, Dunn Meadow has the opportunity, pursuant to Rule 11(c)(5), to withdraw its guilty plea, and the United States may also withdraw from the plea agreement. The parties agree to request that the Court dispense with a presentence investigation pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A)(ii) and impose sentence immediately after the entry of the guilty plea.

In the event that Dunn Meadow withdraws its guilty plea or the judgment of conviction entered as a result does not remain in full force and effect, the waiver of indictment filed at the time of the plea hearing will remain in full force and effect, and Dunn Meadow shall waive any right it might have under Federal Rule of Evidence 410(a), Federal Rule of Criminal Procedure 11(f), or otherwise, to prohibit the use of its statements made or information provided during a proceeding under Fed. R. Crim. P. 11. The waiver of indictment applies to both counts of the Information and may be asserted and enforced by the United States in any judicial district, including the District of New Jersey. Dunn Meadow further agrees that, if it withdraws its guilty plea or the judgment of conviction entered as a result does not remain in full force and effect, the criminal Information that will be filed in the District of New Jersey on the date of its plea hearing shall remain pending.

Stipulations

This Office and Dunn Meadow will stipulate at sentencing to the statements set forth in the attached Schedule A, which is part of this plea agreement. Both parties understand that the sentencing judge and the United States Probation Office are not bound by those stipulations and may make independent factual findings and may reject any or all of the parties' stipulations. Nor do these stipulations restrict the parties' rights to respond at sentencing to questions from the Court and to correct at sentencing or through a timely motion under Federal Rule of Criminal Procedure 35(a) factually inaccurate information that has been provided to or adopted by the Court.

This agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this

agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it believes materially conflicts with a Schedule A stipulation, that stipulation shall no longer bind this Office. A determination that a Schedule A stipulation is not binding shall not release the parties from any other portion of this agreement, including any other Schedule A stipulation.

If the sentencing court rejects a Schedule A stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court did so properly. Finally, to the extent that the parties do not stipulate to a particular fact or legal conclusion in this agreement, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence.

Waiver of Appeal and Post-Sentencing Rights

The United States and Dunn Meadow agree that, provided the Court imposes a sentence in accordance with this Rule 11(c)(1)(C) plea agreement, neither party will appeal that sentence. Dunn Meadow further agrees that, in exchange for the concessions the United States made in entering into this Rule 11(c)(1)(C) plea agreement, it will not challenge its conviction for any reason by any means, other than ineffective assistance of counsel, and it will not challenge or seek to modify any component of its sentence for any reason by any means, other than ineffective assistance of counsel. The term "any means" includes, but is not limited to, a direct appeal under 18 U.S.C. § 3742 or 28 U.S.C. § 1291, a coram nobis petition, or any other petition or motion, however captioned, that seeks to attack or modify any component of the judgment of conviction or sentence. Lastly, the parties have stipulated to certain facts in the Schedule A to this plea agreement. Accordingly, the parties agree that they will not challenge at any time, using any means, the Court's acceptance of those stipulated facts.

Forfeiture

As part of his acceptance of responsibility, Dunn Meadow agrees to forfeit to the United States: (i) pursuant to 21 U.S.C. § 853, any and all property constituting or derived from any proceeds obtained directly or indirectly as a result of the offense charged in Count One of the Information and any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of such offense; and (ii) pursuant to 18 U.S.C. § 982(a)(7), Dunn Meadow agrees to forfeit to the United States all of its right, title, and interest in all property that Dunn Meadow obtained that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the violation of 42 U.S.C. § 1320a-7b(b)(1)(B) charged in Count Two of the Information.

Dunn Meadow further consents to the entry of a forfeiture judgment in the amount representing: (i) the proceeds it obtained as a result of committing the offenses charged in Counts One and Two of the Information, pursuant to 21 U.S.C. § 853 and 18 U.S.C. § 982(a)(7); and (ii) the property used or intended to be used in any manner or part to commit and to facilitate the commission of the offenses charged in Count One, pursuant to 21 U.S.C. § 853 (the "Forfeiture Judgment"). Payment of the Forfeiture Judgment shall be made by certified or bank check payable to the United States Marshals Service with the criminal docket number noted on the face of the check. Dunn Meadow shall cause said check to be delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102.

Dunn Meadow waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, incorporation of the forfeiture in the judgment, and its presence at the plea and sentencing. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, Dunn Meadow consents to the entry of a Consent Judgment of Forfeiture that will be final as to it prior to its sentencing. Dunn Meadow understands that criminal forfeiture pursuant to 21 U.S.C. § 853 is part of the sentence that may be imposed in this case and waives any failure by the Court to advise it of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding. It is further understood that any forfeiture of Dunn Meadow's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon it in addition to forfeiture. Dunn Meadow hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Dunn Meadow has provided sworn financial disclosures and supporting documents (the "Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this agreement. If the United States determines that Dunn Meadow has intentionally made material misrepresentations or failed to disclose assets in its Financial Disclosures, Dunn Meadow agrees that such behavior constitutes a material breach of this agreement, and the United States reserves the right, regardless of any agreement or stipulation that might otherwise apply, to seek leave of the Court to withdraw from this agreement or seek other relief.

Cooperation

Dunn Meadow shall cooperate completely and truthfully with the United States' ongoing investigations and any resulting prosecutions in connection

with matters described in the Information. Dunn Meadow's ongoing cooperation is a condition of this agreement and failure to comply with this term shall be deemed a material breach of this agreement. As reflected in the Justice Manual, Dunn Meadow's cooperation will include: (1) making disclosures of all relevant facts about any individuals who were involved in the misconduct; (2) to the extent possible, making witnesses available for interviews and providing the United States relevant documentary evidence; and (3) voluntary disclosure of other wrongdoing identified by Dunn Meadow. The United States will determine in its sole discretion whether information it seeks from Dunn Meadow as part of Dunn Meadow's cooperation is relevant to the United States' investigations.

Notwithstanding any provision of this agreement, (1) Dunn Meadow is not required to request that its current or former officers, agents, or employees forgo seeking the advice of an attorney or act contrary to that advice; (2) Dunn Meadow is not required to take any action against its officers, agents, or employees for following their attorney's advice; and (3) Dunn Meadow is not required to waive any privilege or claim of work product protection.

Other Provisions

No provision of this agreement shall preclude Dunn Meadow from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that Dunn Meadow received constitutionally ineffective assistance of counsel.

Corporate Authorization

Dunn Meadow agrees that it is authorized to enter into this agreement, that it has authorized the undersigned corporate representative, Carolyn Cohen, to take this action, and that all corporate formalities for such authorization have been observed. By entering this guilty plea, Dunn Meadow hereby waives all objections to the form of the charging document and admits that it is in fact guilty of the offenses charged in the Information.

Dunn Meadow has provided to the United States a certified copy of a resolution of the governing body of Dunn Meadow, affirming that it has authority to enter into this agreement and has (1) reviewed this plea agreement; (2) consulted with legal counsel in this matter; (3) authorized execution of this agreement; (4) authorized Dunn Meadow to plead guilty to the Information; and (5) authorized Carolyn Cohen to execute this agreement and all other documents necessary to carry out the provisions of this agreement. A copy of this resolution is attached hereto as Exhibit A.

No Other Promises

This agreement and the Exhibit hereto constitute the plea agreement between Dunn Meadow and the United States and together their terms supersede any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PHILIP R. SELLINGER
United States Attorney

By: Jonathan M. Peck
Jonathan M. Peck
Assistant U.S. Attorney

By: Ryan O'Neill
Ryan O'Neill
Assistant U.S. Attorney

By: Emma Spiro
Emma Spiro
Assistant U.S. Attorney

Approved:

Nicholas Grippo
Nicholas Grippo
Chief, Criminal Division

I am the authorized corporate representative for Dunn Meadow LLC ("Dunn Meadow"). I have received this letter from Robert J. Cleary, Esq., who is the attorney for Dunn Meadow. I have read the letter, and Mr. Cleary and I have discussed it and all of its provisions, including those addressing the charges, sentencing, stipulations, forfeiture and waiver, as well as the impact Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure has upon this agreement. I understand this letter fully. On behalf of and with the express authorization of Dunn Meadow, I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. Dunn Meadow understands that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. Dunn Meadow wants to plead guilty pursuant to this plea agreement.

I have had no involvement whatsoever in the business or operations of Dunn Meadow LLC or any of its affiliates, and I have no knowledge of the facts or circumstances set forth in this agreement. My execution of the agreement is solely in my capacity as an authorized person on behalf of Dunn Meadow, solely for the purpose of binding Dunn Meadow to this agreement. I have no fiduciary duties, agency, authority, rights, powers, or privileges with respect to Dunn Meadow or any of its affiliates other than the authority to sign this agreement on behalf of Dunn Meadow.

AGREED AND ACCEPTED

Dunn Meadow LLC

Date: 7/8/2022

By:


Carolyn Cohen

As Authorized Representative of Dunn Meadow LLC

I am counsel for Dunn Meadow LLC ("Dunn Meadow"). I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, forfeiture and waiver, as well as the impact Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure has upon this agreement. Further, I have fully advised the authorized corporate representative, Carolyn Cohen, of Dunn Meadow's rights regarding this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, forfeiture and waiver, as well as the impact Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure has upon this agreement. My client, Dunn Meadow, understands this plea agreement fully and wants to plead guilty pursuant to it.



Robert J. Cleary, Esq.
Counsel for Dunn Meadow LLC

Date: 7/8/22

Schedule A

The United States and Dunn Meadow LLC agree to stipulate to the following facts:

Count One

1. At all times relevant to this agreement, Dunn Meadow LLC ("Dunn Meadow") was a privately held corporation, which was incorporated in New Jersey in or about September 2014. Dunn Meadow was a licensed retail pharmacy in all 50 states and was also registered to distribute controlled substances by the U.S. Drug Enforcement Administration.

2. Dunn Meadow functioned as a mail-order pharmacy, shipping controlled substances and other medications to patients in New Jersey and other states via overnight mail and other delivery methods. Dunn Meadow referred to itself as a "specialty pharmacy" and claimed to specialize in pain management medications, i.e., prescription opioids, including transmucosal immediate release fentanyl. However, prior to working at Dunn Meadow, the Pharmacist in Charge at Dunn Meadow had no specialized clinical experience or training in the field of pain management.

3. From in or about 2015 to at least in or about 2019, Dunn Meadow knowingly and intentionally conspired and agreed with others to dispense controlled substances, including fentanyl, knowing that prescriptions for such controlled substances were not written for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.

4. For example, Dunn Meadow knowingly filled prescriptions for controlled substances, including fentanyl, for patients exhibiting suspicious or drug-seeking behavior, including patients that repeatedly requested early refills, paid thousands of dollars in cash for their prescriptions, or requested that prescriptions be sent to suspicious or inappropriate locations including hotels, casinos, and elementary schools.

5. Dunn Meadow also knowingly filled prescriptions for controlled substances, including fentanyl, written by health care providers ("HCPs") whose prescribing practices indicated that a number of those controlled substance prescriptions were not written for a legitimate medical purpose. In fact, Dunn Meadow was warned or otherwise placed on notice regarding the suspicious and problematic prescribing habits and histories of some of these HCP's by compliance professionals working for companies that supplied Dunn Meadow with controlled substances. Notwithstanding these warnings, Dunn Meadow continued to fill prescriptions written by those HCPs.

6. On a number of occasions, Dunn Meadow failed to adequately confirm the diagnoses or clinical profiles of patients for whom it filled prescriptions for controlled substances, including fentanyl. In some instances, Dunn Meadow relied on sensitive clinical information about patients, including their diagnoses, provided by sales representatives from opioid manufacturers rather than confirming the appropriateness of the controlled substance directly with the HCP.

7. Dunn Meadow established a pattern and practice of filling prescriptions for fentanyl and other controlled substances without receiving an original prescription. Specifically, Dunn Meadow maintained a "Send Without Original" ("SWO") list, which consisted of the names of certain HCPs across the United States who were important, high-value prescribers of controlled substances, including fentanyl. Dunn Meadow authorized its employees to fill and ship any prescription for any controlled substance—including fentanyl—to any patient of an HCP on the SWO list without first receiving the original, hard-copy prescription. In some cases, Dunn Meadow never received original prescriptions for fentanyl and other controlled substances that it shipped to patients.

8. Prior to February 14, 2016, two different suppliers had stopped selling controlled substances to Dunn Meadow. One of the suppliers explicitly warned Dunn Meadow that it had serious concerns about Dunn Meadow's history of filling prescriptions for controlled substances written by HCPs whose prescribing practices were highly suspicious and indicative of controlled substance diversion. Thereafter, Dunn Meadow submitted at least three different applications to other suppliers in order to purchase controlled substances in which it represented that no supplier had ever suspended, ceased, or restricted controlled substance sales to Dunn Meadow.

Count Two

9. From in or about 2015 to in or about 2019, Dunn Meadow employed sales representatives to establish and maintain relationships with HCPs who prescribed controlled substances, including fentanyl.

10. From in or around 2015 to in or around 2019, Dunn Meadow knowingly and intentionally conspired and agreed with others to offer and to provide remuneration to HCPs and their staff in the form of lunches, dinners, and happy hours. At least one purpose of such remuneration was to induce those HCPs to send their patients' prescriptions to Dunn Meadow, for which payment was made in whole or in part under a Federal healthcare program.

11. For example, from on or about April 6, 2016, through on or about April 10, 2018, Dunn Meadow expense reports reflect that one of its sales employees spent approximately \$3,800 for marketing and entertainment

provided to a single HCP practice, who ultimately sent fentanyl prescriptions to Dunn Meadow. From on or about April 10, 2017 through on or about January 20, 2018, Dunn Meadow spent approximately \$2,100 for marketing and entertainment provided to another HCP practice, in part to induce the practice to send patient prescriptions to Dunn Meadow.

12. Dunn Meadow sales representatives also established close relationships with sales representatives from a leading manufacturer of fentanyl and provided those representatives with remuneration, in part to induce them to market Dunn Meadow to HCPs and to encourage HCPs to send their patients' prescriptions to Dunn Meadow. For example, from in or about February 2016 through in or about August 2016, Dunn Meadow sales representatives knowingly and intentionally offered remuneration to sales representatives employed by a prominent manufacturer of a fentanyl medication in the form of lunches, dinners, and happy hours. In return, the manufacturer's sales representatives steered prescriptions to Dunn Meadow and supplied Dunn Meadow with patient records and patient-specific clinical information to expedite insurance coverage.

13. Dunn Meadow's conduct in violation of the Federal Anti-Kickback Statute caused a loss to federally-funded healthcare programs of at least \$4,498,920.82.