

FILED

2016 FEB 16 AM 11:26

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

1 EILEEN M. DECKER  
United States Attorney  
2 LAWRENCE S. MIDDLETON  
Assistant United States Attorney  
3 Chief, Criminal Division  
MARK A. WILLIAMS (Cal. Bar No. 239351)  
4 Assistant United States Attorney  
Deputy Chief, Environmental and Community  
5 Safety Crimes Section  
1300 United States Courthouse  
6 312 North Spring Street  
Los Angeles, California 90012  
7 Telephone: (213) 894-3359  
Facsimile: (213) 894-6436  
8 E-mail: mark.a.williams@usdoj.gov

9 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 NICHOLAS BRANDT-SORENSEN,

17 Defendant.

No. CR 16-

**CR16-0076**

PLEA AGREEMENT FOR DEFENDANT  
NICHOLAS BRANDT-SORENSEN

18  
19 1. This constitutes the plea agreement between DEFENDANT  
20 NICHOLAS BRANDT-SORENSEN ("defendant") and the United States  
21 Attorney's Office for the Central District of California (the "USAO")  
22 in the above-captioned case. This agreement is limited to the USAO  
23 and cannot bind any other federal, state, local, or foreign  
24 prosecuting, enforcement, administrative, or regulatory authorities.

25 DEFENDANT'S OBLIGATIONS

26 2. Defendant agrees to:

27 a. Give up the right to indictment by a grand jury and,  
28 at the earliest opportunity requested by the USAO and provided by the

1 Court, appear and plead guilty to a one-count information in the form  
2 attached to this agreement as Exhibit A or a substantially similar  
3 form, which charges defendant with introducing a misbranded drug into  
4 interstate commerce in violation of 21 U.S.C. §§ 331(a), 333(a)(1).

5 b. Not contest facts agreed to in this agreement.

6 c. Abide by all agreements regarding sentencing contained  
7 in this agreement.

8 d. Appear for all court appearances, surrender as ordered  
9 for service of sentence, obey all conditions of any bond, and obey  
10 any other ongoing court order in this matter.

11 e. Not commit any crime; however, offenses that would be  
12 excluded for sentencing purposes under United States Sentencing  
13 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not  
14 within the scope of this agreement.

15 f. Be truthful at all times with Pretrial Services, the  
16 United States Probation Office, and the Court.

17 g. Pay the applicable special assessment at or before the  
18 time of sentencing unless defendant lacks the ability to pay and  
19 prior to sentencing submits a completed financial statement on a form  
20 to be provided by the USAO.

21 h. Recommend and advocate to the Court that defendant be  
22 sentenced to a three-year term of probation, 300 hours of community  
23 service as a condition of probation, a fine of \$5,000, and a special  
24 assessment of \$25.

25 THE USAO'S OBLIGATIONS

26 3. The USAO agrees to:

27 a. Not contest facts agreed to in this agreement.  
28

1           b. Abide by all agreements regarding sentencing contained  
2 in this agreement.

3           c. At the time of sentencing, provided that defendant  
4 demonstrates an acceptance of responsibility for the offense up to  
5 and including the time of sentencing, recommend a two-level reduction  
6 in the applicable Sentencing Guidelines offense level, pursuant to  
7 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an  
8 additional one-level reduction if available under that section.

9           d. Recommend and advocate to the Court that defendant be  
10 sentenced to a three-year term of probation, 300 hours of community  
11 service as a condition of probation, a fine of \$5,000, and a special  
12 assessment of \$25.

13                                   NATURE OF THE OFFENSE

14           4. Defendant understands that for defendant to be guilty of  
15 the crime charged in the one-count information, that is, introducing  
16 a misbranded drug into interstate commerce, a class A misdemeanor  
17 violation of 21 U.S.C. §§ 331(a), 333(a)(1), the following must be  
18 true: (1) defendant introduced a drug into interstate commerce; and  
19 (2) the drug was misbranded because it did not bear adequate  
20 directions for its use.

21                                   PENALTIES

22           5. Defendant understands that the statutory maximum sentence  
23 that the Court can impose for a class A misdemeanor violation of 21  
24 U.S.C. §§ 331(a), 333(a)(1), is: a one-year term of imprisonment; a  
25 one-year period of supervised release or a five-year period of  
26 probation if no imprisonment is imposed; a fine of \$100,000 or twice  
27 the gross gain or gross loss resulting from the offense, whichever is  
28 greatest; and a mandatory special assessment of \$25.

1           6. Defendant understands that supervised release is a period  
2 of time following imprisonment during which defendant will be subject  
3 to various restrictions and requirements. Defendant understands that  
4 if defendant violates one or more of the conditions of any supervised  
5 release imposed, defendant may be returned to prison for all or part  
6 of the term of supervised release authorized by statute for the  
7 offense that resulted in the term of supervised release, which could  
8 result in defendant serving a total term of imprisonment greater than  
9 the statutory maximum stated above.

10           7. Defendant understands that, by pleading guilty, defendant  
11 may be giving up valuable government benefits and valuable civic  
12 rights. Defendant understands that the conviction in this case may  
13 also subject defendant to various other collateral consequences,  
14 including but not limited to revocation of probation, parole, or  
15 supervised release in another case and suspension or revocation of a  
16 professional license. Defendant understands that unanticipated  
17 collateral consequences will not serve as grounds to withdraw  
18 defendant's guilty plea.

19           8. Defendant understands that, if defendant is not a United  
20 States citizen, the conviction in this case may subject defendant to:  
21 removal, also known as deportation, which may, under some  
22 circumstances, be mandatory; denial of citizenship; and denial of  
23 admission to the United States in the future. The court cannot, and  
24 defendant's attorney also may not be able to, advise defendant fully  
25 regarding the immigration consequences of the conviction in this  
26 case. Defendant understands that unexpected immigration consequences  
27 will not serve as grounds to withdraw defendant's guilty plea.

28

FACTUAL BASIS

1  
2           9. Defendant admits that defendant is, in fact, guilty of the  
3 offense to which defendant is agreeing to plead guilty. Defendant  
4 and the USAO agree to the statement of facts provided below and agree  
5 that this statement of facts is sufficient to support a plea of  
6 guilty to the charge described in this agreement and to establish the  
7 Sentencing Guidelines factors set forth in paragraph 11 below but is  
8 not meant to be a complete recitation of all facts relevant to the  
9 underlying criminal conduct or all facts known to either party that  
10 relate to that conduct.

11           In or about 2011, defendant was a professional masters cyclist  
12 living in the Los Angeles, California, area. Defendant had also  
13 created the online blog "Anemia Patient Group" under the guise of  
14 providing "theoretical" information about various performance  
15 enhancing drugs and substances "for research purposes." In fact,  
16 defendant used the Anemia Patient Group blog to obtain customers to  
17 whom he would sell performance enhancing drugs and substances. For  
18 example, the blog advertised various prescription drugs and  
19 substances for sale "for research purposes," including erythropoietin  
20 ("EPO"), human chorionic gonadotropin ("HCG"), Actovegin, IGF-1, and  
21 pentoxifylline. Defendant also created and used the fake name "Eric  
22 Horowitz" that he used to do business in connection with the Anemia  
23 Patient Group blog.

24           Defendant obtained the prescription drugs from a source in China  
25 and European online pharmacies, and then had them delivered to his  
26 home address in Los Angeles, California. He then mailed the drugs to  
27 multiple professional and amateur athletes. In or about March 2011,  
28 defendant sold a vial of EPO to an athlete in Colorado for \$631.

1 Defendant had previously sold that athlete performance enhancing  
2 drugs, including EPO and human growth hormone ("HGH"), through the  
3 Anemia Patient Group blog. On March 12, 2011, defendant sent the EPO  
4 from Los Angeles, California, to the athlete in Boulder, Colorado,  
5 using the United States Postal Service. At all relevant times,  
6 defendant believed that the athlete would be using the EPO himself  
7 and that the athlete did not have a prescription for the EPO.

8 EPO is a prescription drug that is used to treat kidney disease,  
9 anemia, and other serious medical conditions. In addition, some  
10 athletes illicitly inject themselves with EPO in order boost the  
11 production of red blood cells, which in turn increases the oxygen  
12 carrying capacity of their blood, causing them to perform at a higher  
13 level. Due to its performance enhancing qualities, as well as the  
14 serious health risks associated with non-medical use of the drug  
15 (potentially including blood clots, strokes, and heart attacks), EPO  
16 is listed as a prohibited substance on the World Anti-Doping Agency  
17 ("WADA") Prohibited List.

#### 18 SENTENCING FACTORS

19 10. Defendant understands that in determining defendant's  
20 sentence the Court is required to calculate the applicable Sentencing  
21 Guidelines range and to consider that range, possible departures  
22 under the Sentencing Guidelines, and the other sentencing factors set  
23 forth in 18 U.S.C. § 3553(a). Defendant understands that the  
24 Sentencing Guidelines are advisory only, that defendant cannot have  
25 any expectation of receiving a sentence within the calculated  
26 Sentencing Guidelines range, and that after considering the  
27 Sentencing Guidelines and the other § 3553(a) factors, the Court will  
28 be free to exercise its discretion to impose any sentence it finds

1 appropriate up to the maximum set by statute for the crime of  
2 conviction.

3 11. Defendant and the USAO agree to the following applicable  
4 Sentencing Guidelines factors:

5 Base Offense Level:	6	[U.S.S.G. § 2N2.1(a)]
6 Acceptance of Responsibility:	-2	[U.S.S.G. § 3E1.1(a)]
7 Total Offense Level:	4	

8

9 12. The USAO will agree to a two-level downward adjustment for  
10 acceptance of responsibility (and, if applicable, move for an  
11 additional one-level downward adjustment under U.S.S.G. § 3E1.1(b))  
12 only if the conditions set forth in paragraph 2 are met. Subject to  
13 paragraph 23 below, defendant and the USAO agree not to seek, argue,  
14 or suggest in any way, either orally or in writing, that any other  
15 specific offense characteristics, adjustments, or departures relating  
16 to the offense level be imposed. Defendant agrees, however, that if,  
17 after signing this agreement but prior to sentencing, defendant were  
18 to commit an act, or the USAO were to discover a previously  
19 undiscovered act committed by defendant prior to signing this  
20 agreement, which act, in the judgment of the USAO, constituted  
21 obstruction of justice within the meaning of U.S.S.G. § 3C1.1, the  
22 USAO would be free to seek the enhancement set forth in that section.

23 13. Defendant understands that there is no agreement as to  
24 defendant's criminal history or criminal history category.

25 WAIVER OF CONSTITUTIONAL RIGHTS

26 14. Defendant understands that by pleading guilty, defendant  
27 gives up the following rights:

28 a. The right to persist in a plea of not guilty.

1           b.    The right to a speedy and public trial by jury.

2           c.    The right to be represented by counsel -- and if  
3 necessary have the court appoint counsel -- at trial. Defendant  
4 understands, however, that, defendant retains the right to be  
5 represented by counsel -- and if necessary have the court appoint  
6 counsel -- at every other stage of the proceeding.

7           d.    The right to be presumed innocent and to have the  
8 burden of proof placed on the government to prove defendant guilty  
9 beyond a reasonable doubt.

10          e.    The right to confront and cross-examine witnesses  
11 against defendant.

12          f.    The right to testify and to present evidence in  
13 opposition to the charges, including the right to compel the  
14 attendance of witnesses to testify.

15          g.    The right not to be compelled to testify, and, if  
16 defendant chose not to testify or present evidence, to have that  
17 choice not be used against defendant.

18          h.    Any and all rights to pursue any affirmative defenses,  
19 Fourth Amendment or Fifth Amendment claims, and other pretrial  
20 motions that have been filed or could be filed.

21                                   WAIVER OF APPEAL OF CONVICTION

22          15. Defendant understands that, with the exception of an appeal  
23 based on a claim that defendant's guilty plea was involuntary, by  
24 pleading guilty defendant is waiving and giving up any right to  
25 appeal defendant's conviction on the offense to which defendant is  
26 pleading guilty.

27

28



1                                    LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

2            16. Defendant agrees that, provided the Court imposes a total  
3 term of imprisonment on all counts of conviction of no more than six  
4 months, or a total period of probation of more than five years if  
5 imprisonment is not imposed, defendant gives up the right to appeal  
6 all of the following: (a) the procedures and calculations used to  
7 determine and impose any portion of the sentence; (b) the term of  
8 imprisonment imposed by the Court; (c) the fine imposed by the court,  
9 provided it is within the statutory maximum; (d) the term of  
10 probation or supervised release imposed by the Court, provided it is  
11 within the statutory maximum; (e) the term of community service  
12 ordered by the Court; and (f) any of the following conditions of  
13 probation or supervised release imposed by the Court: the conditions  
14 set forth in General Orders 318, 01-05, and/or 05-02 of this Court;  
15 the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and  
16 3583(d); the alcohol and drug use conditions authorized by 18 U.S.C.  
17 § 3563(b)(7); and any conditions of probation or supervised release  
18 agreed to by defendant in paragraph 2 above.

19            17. The USAO agrees that, provided (a) all portions of the  
20 sentence are at or below the statutory maximum specified above and  
21 (b) the Court imposes a term of probation of no less than three  
22 years, the USAO gives up its right to appeal any portion of the  
23 sentence.

24                                    RESULT OF WITHDRAWAL OF GUILTY PLEA

25            18. Defendant agrees that if, after entering a guilty plea  
26 pursuant to this agreement, defendant seeks to withdraw and succeeds  
27 in withdrawing defendant's guilty plea on any basis other than a  
28 claim and finding that entry into this plea agreement was

1 involuntary, then (a) the USAO will be relieved of all of its  
2 obligations under this agreement; and (b) should the USAO choose to  
3 pursue any charge or any civil, administrative, or regulatory action  
4 that was either dismissed or not filed as a result of this agreement,  
5 then (i) any applicable statute of limitations will be tolled between  
6 the date of defendant's signing of this agreement and the filing  
7 commencing any such action; and (ii) defendant waives and gives up  
8 all defenses based on the statute of limitations, any claim of pre-  
9 indictment delay, or any speedy trial claim with respect to any such  
10 action, except to the extent that such defenses existed as of the  
11 date of defendant's signing this agreement.

12 EFFECTIVE DATE OF AGREEMENT

13 19. This agreement is effective upon signature and execution of  
14 all required certifications by defendant, defendant's counsel, and an  
15 Assistant United States Attorney.

16 BREACH OF AGREEMENT

17 20. Defendant agrees that if defendant, at any time after the  
18 signature of this agreement and execution of all required  
19 certifications by defendant, defendant's counsel, and an Assistant  
20 United States Attorney, knowingly violates or fails to perform any of  
21 defendant's obligations under this agreement ("a breach"), the USAO  
22 may declare this agreement breached. All of defendant's obligations  
23 are material, a single breach of this agreement is sufficient for the  
24 USAO to declare a breach, and defendant shall not be deemed to have  
25 cured a breach without the express agreement of the USAO in writing.  
26 If the USAO declares this agreement breached, and the Court finds  
27 such a breach to have occurred, then: (a) if defendant has previously  
28 entered a guilty plea pursuant to this agreement, defendant will not

1 be able to withdraw the guilty plea, and (b) the USAO will be  
2 relieved of all its obligations under this agreement.

3 21. Following the Court's finding of a knowing breach of this  
4 agreement by defendant, should the USAO choose to pursue any charge  
5 or any civil, administrative, or regulatory action that was either  
6 dismissed or not filed as a result of this agreement, then:

7 a. Defendant agrees that any applicable statute of  
8 limitations is tolled between the date of defendant's signing of this  
9 agreement and the filing commencing any such action.

10 b. Defendant waives and gives up all defenses based on  
11 the statute of limitations, any claim of pre-indictment delay, or any  
12 speedy trial claim with respect to any such action, except to the  
13 extent that such defenses existed as of the date of defendant's  
14 signing this agreement.

15 c. Defendant agrees that: (i) any statements made by  
16 defendant, under oath, at the guilty plea hearing (if such a hearing  
17 occurred prior to the breach); (ii) the agreed to factual basis  
18 statement in this agreement; and (iii) any evidence derived from such  
19 statements, shall be admissible against defendant in any such action  
20 against defendant, and defendant waives and gives up any claim under  
21 the United States Constitution, any statute, Rule 410 of the Federal  
22 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
23 Procedure, or any other federal rule, that the statements or any  
24 evidence derived from the statements should be suppressed or are  
25 inadmissible.

26 COURT AND PROBATION OFFICE NOT PARTIES

27 22. Defendant understands that the Court and the United States  
28 Probation Office are not parties to this agreement and need not

1 accept any of the USAO's sentencing recommendations or the parties'  
2 agreements to facts or sentencing factors.

3 23. Defendant understands that both defendant and the USAO are  
4 free to: (a) supplement the facts by supplying relevant information  
5 to the United States Probation Office and the Court, (b) correct any  
6 and all factual misstatements relating to the Court's Sentencing  
7 Guidelines calculations and determination of sentence, and (c) argue  
8 on appeal and collateral review that the Court's Sentencing  
9 Guidelines calculations and the sentence it chooses to impose are not  
10 error, although each party agrees to maintain its view that the  
11 calculations in paragraph 11 are consistent with the facts of this  
12 case. While this paragraph permits both the USAO and defendant to  
13 submit full and complete factual information to the United States  
14 Probation Office and the Court, even if that factual information may  
15 be viewed as inconsistent with the facts agreed to in this agreement,  
16 this paragraph does not affect defendant's and the USAO's obligations  
17 not to contest the facts agreed to in this agreement.

18 24. Defendant understands that even if the Court ignores any  
19 sentencing recommendation, finds facts or reaches conclusions  
20 different from those agreed to, and/or imposes any sentence up to the  
21 maximum established by statute, defendant cannot, for that reason,  
22 withdraw defendant's guilty plea, and defendant will remain bound to  
23 fulfill all defendant's obligations under this agreement. Defendant  
24 understands that no one -- not the prosecutor, defendant's attorney,  
25 or the Court -- can make a binding prediction or promise regarding  
26 the sentence defendant will receive, except that it will be within  
27 the statutory maximum.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

NO ADDITIONAL AGREEMENTS

25. Defendant understands that, except as set forth herein, there are no promises, understandings, or agreements between the USAO and defendant or defendant's attorney, and that no additional promise, understanding, or agreement may be entered into unless in a writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

26. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE  
FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

EILEEN M. DECKER  
United States Attorney



MARK A. WILLIAMS  
Assistant United States Attorney

2/2/16  
Date



NICHOLAS BRANDT-SORENSEN  
Defendant

1-29-16  
Date



MARILYN BEDNARSKI  
Attorney for Defendant  
NICHOLAS BRANDT-SORENSEN

1-29-16  
Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.


  
\_\_\_\_\_  
NICHOLAS BRANDT-SORENSEN  
Defendant

1-29-16  
\_\_\_\_\_  
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am defendant NICHOLAS BRANDT-SORENSEN's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing

1 factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing  
2 Guidelines provisions, and of the consequences of entering into this  
3 agreement. To my knowledge: no promises, inducements, or  
4 representations of any kind have been made to my client other than  
5 those contained in this agreement; no one has threatened or forced my  
6 client in any way to enter into this agreement; my client's decision  
7 to enter into this agreement is an informed and voluntary one; and  
8 the factual basis set forth in this agreement is sufficient to  
9 support my client's entry of a guilty plea pursuant to this  
10 agreement.

11   
12 \_\_\_\_\_  
13 MARIYLN BEDNARSKI  
14 Attorney for Defendant  
15 NICHOLAS BRANDT-SORENSEN

1-29-16  
\_\_\_\_\_  
Date

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

Case No. CR 16- 0076-RAO-1

Date: March 16, 2016

Present: The Honorable: ROZELLA A. OLIVER, UNITED STATES MAGISTRATE JUDGE

Interpreter None

G. Roberson  
*Deputy Clerk*

Courtsmart- 3/16/2016  
*Court Reporter / Recorder*

Mark A. Williams  
*Assistant U.S. Attorney*

<u>U.S.A. v. Defendant(s)</u>	<u>Present</u>	<u>Cust</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App</u>	<u>Ret</u>
NICHOLAS BRANDT-SORENSEN	X		X	Marilyn E. Bednarski	X		X

**Proceedings: GUILTY PLEA HEARING**

Case called. Counsels make their appearances. Defendant is present and sworn. The Court questions the Defendant and Defense counsel regarding the knowing and voluntary nature of the proposed plea and the terms of the plea agreement.

The Court reads the charge and advises the Defendant of the elements of the offense. Defendant was advised of his limited right to appeal the sentence.

Defendant pleads guilty to one-count Information [Class A Misdemeanor] charging him with 21 U.S.C. § 331 (a) , 333 (a) (1), Introduction of misbranded drug into interstate commerce. The Court finds that the plea of guilty has been freely, knowingly and voluntarily made; that the Defendant understands the nature of the charge and the consequences of the plea; and that there is factual basis for the plea.

After further questioning of the Defendant, the Court orders the plea of guilty accepted and entered.

The Parties are informed the sentencing is scheduled for Wednesday, July 20, 2016 at 10:00a.m., Courtroom F, 9<sup>th</sup> Floor, Spring Street Federal Building, 312 N. Spring street, Los Angeles, California, 90012. The Defendant is directed to contact the U.S. Department of Probation to begin the pre-sentence investigation process. The Department of Probation is ordered to submit to the Court a pre-sentence report upon completion for the July 20, 2016 sentencing.

The Defendant is to remain on the same conditions of the pretrial release bond. The Parties are to provide to the Court sentencing guidelines at least 2weeks prior to the Sentencing hearing.

cc: United States Probation Department  
Assistant United States Attorney  
Defense Attorney

Initials of Deputy Clerk            : 30  
            
gr