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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 SHAPOUR MOINIAN, aka Lion King,
15 Defendant
16

Case No.: 21CR2927-JM

PLEA AGREEMENT

17
18 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,
19 through its counsel, Randy S. Grossman, United States Attorney, and Assistant United
20 States Attorneys Fred Sheppard and John N. Parmley and Defendant, SHAPOUR
21 MOINIAN, with the advice and consent of Nathan Feneis, counsel for Defendant, as
22 follows:

23 **I**

24 **THE PLEA**

25 Defendant agrees to waive indictment and plead guilty to a Superseding Information,
26 charging him with one count of acting as an agent on behalf of a foreign government,
27 without notification to the Attorney General, in violation of Title 18, U.S.C., Sec. 951, and
28 two counts of false statement, in violation of Title 18, U.S.C., Sec. 1001.

SM

II

NATURE OF THE OFFENSE

A. **ELEMENTS EXPLAINED**

Defendant understands that the counts to which he is pleading guilty carry the following elements:

Acting as an Agent of a Foreign Government Without Notification

First, the defendant acted in the United States as an agent of a foreign government or official;

Second, the defendant failed to notify the Attorney General that he would be acting as an agent of the government or official;

Third, the defendant acted knowingly.

False Statement

First, the defendant made a false statement in a matter within the jurisdiction of the executive branch of the United States Government;

Second, the defendant acted willfully; that is, the defendant acted deliberately and with knowledge both that the statement was untrue and that his or her conduct was unlawful; and

Third, the statement was material to the activities or decisions of the executive branch of the United States Government, that is, it had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities.

B. **ELEMENTS UNDERSTOOD AND ADMITTED – FACTUAL BASIS**

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crimes, and admits that there is a factual basis for this guilty plea as provided below. To the extent any information below is derived from or corroborated by information relayed by Defendant during any prior proffer or interview with officials from the United States, Defendant waives any objection to its inclusion in this factual basis for the purpose of entering a guilty plea:

1) Defendant is a former helicopter pilot with the United States military, having served in the United States, Germany, and South Korea, from approximately 1977 through 2000. After his service, Defendant worked for various cleared defense contractors ("CDCs") in the United States, as well as the Department of Defense.

2) In 2016, Defendant was working for CDC A on various aviation projects. That same year, Defendant messaged back and forth with Individual A through an online employment service. At the time, Individual A claimed to be working for a technical recruiting company in China and offered Defendant the opportunity to consult for the aviation industry in China.

3) Defendant and Individual A arranged for Defendant to travel to Hong Kong at no expense to Defendant to meet with Individual A and others to discuss Defendant entering such an arrangement. In March 2017, Defendant travelled to Hong Kong where he met with Individual A and others. At the time, Defendant was working in San Diego, California for CDC A on aviation projects used by the military and intelligence agencies in the United States and other allied countries.

4) During his trip and meeting in Hong Kong, Defendant agreed to provide information and materials related to multiple types of aircraft designed and/or manufactured in the United States in exchange for money. Defendant was provided approximately \$7,000-\$10,000 in United States Currency during the trip by one of Individual A's associates. At the time the Defendant agreed to provide these aviation-related materials to Individual A and Individual A's associates—as well as during every subsequent interaction with these individuals—he knew that they were employed by or directed by the government of the People's Republic of China. Thus, in agreeing to provide Individual A and Individual A's associates aviation-related information in exchange for money, Defendant knew that he was acting at the direction of a foreign government. At no point did he notify the Attorney General of the United States of his actions.

5) Upon returning to the United States, Defendant began gathering aviation-related materials for Individual A and Individual A's associates, which included

1 transferring material from CDC A to a thumb drive. Defendant updated Individual A via
2 various means of electronic messaging as to his progress on the materials that he was
3 gathering at Individual A and the associates' direction.

4 6) On July 7, 2017, while still working for CDC A, Defendant electronically
5 submitted through e-QIP his completed SF-86 questionnaire for his national security
6 clearance background check. Section 19, entitled "Foreign Contacts," asked, "Do you have,
7 or have you had, close and/or continuing contact with a foreign national within the last
8 seven (7) years with whom you, or your spouse, or cohabitant are bound by affection,
9 influence, common interests, and/or obligation?" Defendant answered, "No."

10 7) Section 20B, entitled "Foreign Business, Professional Activities, and Foreign
11 Government Contacts, asked, "Has any foreign national in the past seven (7) years offered
12 you a job, asked you to work as a consultant, or consider employment with them?"
13 Defendant answered, "No."

14 8) Defendant affirmed in this same questionnaire that his answers were true,
15 complete, and correct. Defendant further acknowledged that false answers would subject
16 him to prosecution for providing false statements, in violation of Title 18 U.S.C., Sec. 1001.
17 At the time, Defendant knew that his answers were materially false and that he was actively
18 consulting for and at the direction of individuals directly employed or tasked by the
19 People's Republic of China. When Defendant falsely answered these questions for his
20 national security background check, he did so willfully. That is, he knew that it was illegal
21 to lie on this form and knew that his answers were false. Moreover, Defendant concedes
22 that his false answers were material to the activities or decisions of the executive branch of
23 the United States Government, more specifically, the Department of Defense and they had
24 a natural tendency to influence, or were capable of influencing, that agency's decisions or
25 activities.

26 9) In September 2017, Defendant traveled overseas and with a stopover at the
27 Shanghai airport where he met with Individual A's associate and provided materials and
28 information on a thumb drive, including proprietary information from CDC A. Following

1 this, Individual A and her associates wired Defendant's payment to the South Korean bank
2 account of Defendant's stepdaughter. Defendant told his stepdaughter that funds were
3 payment for his consulting work overseas and instructed her to transfer the funds to him in
4 multiple transactions.

5 10) In addition to providing Defendant with cash payments and funds via his
6 stepdaughter's South Korean bank account, Individual A and her associates provided
7 Defendant with a particular cellular telephone to communicate with them, as well as other
8 equipment to aid in the electronic transfer of materials and information.

9 11) At the end of March 2018, Defendant traveled overseas and again met with
10 Individual A and Individual A's associates in Bali before returning to the United States.

11 12) In or about May 2018, Defendant started working at CDC B. During this same
12 time period, Individual A and Individual A's associates transferred thousands of dollars
13 into the South Korean bank account of Defendant's stepdaughter, who subsequently wired
14 the funds to Defendant in multiple transactions.

15 13) Defendant continued to compile aircraft information from CDC A, as well as
16 another CDC where Defendant worked prior to CDC A, to provide to Individual A and her
17 associates. Defendant did so knowing that Individual A and Individual A's associates were
18 employed by, directed by, and/or subject to the control of the People's Republic of China.

19 14) In August 2019, Defendant again traveled to Hong Kong and met with
20 Individual A and her associates where he was again paid for his services, this time receiving
21 approximately \$22,000 in United States Currency, which Defendant and his wife
22 subsequently smuggled back into the United States.

23 15) On March 12, 2020, Defendant electronically submitted through e-QIP his
24 completed SF-86C questionnaire for his national security clearance background check. In
25 Block 2, Defendant answered multiple questions regarding any change in circumstances to
26 his most recent SF-86 questionnaire referenced previously. The SF-86C instructed, "If you
27 report no change to a Question, place an 'X' in the NO box. If there is a change, place an
28 'X' in the Yes box. All Yes answers must be explained...." For Questions 19 and 20,

1 "Foreign Contacts" and "Foreign Activities," Defendant answered that there was no change
2 since the information he previously provided above in his SF-86 submitted on July 7, 2017.

3 16) Defendant affirmed that his answers were true, complete, and correct.
4 Defendant further acknowledged that false answers would subject him to prosecution for
5 providing false statements, in violation of Title 18 U.S.C., Sec. 1001. At the time,
6 Defendant knew it was illegal to lie on this form, that his answers were materially false and
7 that he had consulted for and at the direction of individuals directly employed or tasked by
8 the People's Republic of China. Defendant concedes that his false answers were material
9 to the activities or decisions of the Department of Defense, and they had a natural tendency
10 to influence, or were capable of influencing, that agency's decisions or activities.

11 III

12 PENALTIES

13 **Acting as an Agent of a Foreign Government Without Notification**

14 Defendant understands that Count 1 (Acting as an Agent of a Foreign Government
15 without Notification) to which Defendant is pleading guilty carries the following penalties:

- 16 A. a maximum 10 years in prison;
- 17 B. a maximum \$250,000 fine;
- 18 C. a mandatory special assessment of \$100 per count; and
- 19 D. a term of supervised release of up to 3 years. Defendant understands that

20 failure to comply with any of the conditions of supervised release may result in revocation
21 of supervised release, requiring Defendant to serve in prison, upon any such revocation, all
22 or part of the statutory maximum term of supervised release for the offense that resulted in
23 such term of supervised release.

24 **False Statement**

25 Defendant understands that Counts 2 and 3 (False Statements) to which Defendant
26 is pleading guilty carries the following penalties:

- 27 A. a maximum 5 years in prison;
- 28 B. a maximum \$250,000 fine;

1 C. a mandatory special assessment of \$100 per count; and

2 D. a term of supervised release of up to 3 years. Defendant understands that
3 failure to comply with any of the conditions of supervised release may result in revocation
4 of supervised release, requiring Defendant to serve in prison, upon any such revocation, all
5 or part of the statutory maximum term of supervised release for the offense that resulted in
6 such term of supervised release.

7 IV

8 **DEFENDANT'S WAIVER OF TRIAL RIGHTS**

9 Defendant understands that this guilty plea waives the right to:

10 A. Continue to plead not guilty and require the Government to prove the elements
11 of the crime beyond a reasonable doubt;

12 B. A speedy and public trial by jury;

13 C. The assistance of counsel at all stages of trial;

14 D. Confront and cross-examine adverse witnesses;

15 E. Testify and present evidence and to have witnesses testify on behalf of
16 Defendant;

17 F. Not testify or have any adverse inferences drawn from the failure to testify;
18 and

19 G. Defendant knowingly and voluntarily waives any rights and defenses
20 Defendant may have under the Excessive Fines Clause of the Eighth Amendment to the
21 United States Constitution to the forfeiture of property in this proceeding or any related
22 civil proceeding.

23 V

24 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED**
25 **WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

26 The Government represents that any information establishing the factual innocence
27 of Defendant known to the undersigned prosecutor in this case has been turned over to
28

1 Defendant. The Government will continue to provide such information establishing the
2 factual innocence of Defendant.

3 Defendant understands that if this case proceeded to trial, the Government would be
4 required to provide impeachment information relating to any informants or other witnesses.
5 In addition, if Defendant raised an affirmative defense, the Government would be required
6 to provide information in its possession that supports such a defense. Defendant
7 acknowledges, however, that by pleading guilty Defendant will not be provided this
8 information, if any, and Defendant also waives the right to this information. Finally,
9 Defendant agrees not to attempt to withdraw the guilty plea or to file a collateral attack
10 based on the existence of this information.

11 VI

12 **DEFENDANT'S REPRESENTATION THAT GUILTY**
13 **PLEA IS KNOWING AND VOLUNTARY**

14 Defendant represents that:

15 A. Defendant has had a full opportunity to discuss all the facts and circumstances
16 of this case with defense counsel and has a clear understanding of the charges and the
17 consequences of this plea. Defendant understands that, by pleading guilty, Defendant may
18 be giving up, and rendered ineligible to receive, valuable government benefits and civic
19 rights, such as the right to vote, the right to possess a firearm, the right to hold office, and
20 the right to serve on a jury. Defendant further understands that the conviction in this case
21 may subject Defendant to various collateral consequences, including but not limited to
22 deportation, removal or other adverse immigration consequences; revocation of probation,
23 parole, or supervised release in another case; debarment from government contracting; and
24 suspension or revocation of a professional license, including a financial professional
25 license. The loss of none of which will serve as grounds to withdraw Defendant's guilty
26 plea.

27 B. No one has made any promises or offered any rewards in return for this guilty
28 plea, other than those contained in this agreement or otherwise disclosed to the Court.

1 C. No one has threatened Defendant or Defendant's family to induce this guilty
2 plea.

3 D. Defendant is pleading guilty because in truth and in fact defendant is guilty
4 and for no other reason.

5 VII

6 **LIMITATIONS OF PLEA AGREEMENT**

7 This plea agreement is limited to the United States Attorney's Office for the
8 Southern District of California and cannot bind any other federal, state or local prosecuting,
9 administrative, or regulatory authorities, although the Government will bring this plea
10 agreement to the attention of other authorities if requested by the Defendant.

11 VIII

12 **APPLICABILITY OF SENTENCING GUIDELINES**

13 Defendant understands the sentence imposed will be based on the factors set forth
14 in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the
15 sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and
16 take them into account. Defendant has discussed the applicable and potentially applicable
17 Guidelines with defense counsel and understands that the Guidelines are only advisory, not
18 mandatory, and the Court may impose a sentence more severe or less severe than otherwise
19 applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant
20 understands further that the sentence cannot be determined until a presentence report has
21 been prepared by the U.S. Probation Office, and both defense counsel and the Government
22 have had an opportunity to review and challenge the presentence report. Nothing in this
23 plea agreement shall be construed as limiting the Government's duty to provide complete
24 and accurate facts to the district court and the U.S. Probation Office.

25 IX

26 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

27 This plea agreement is made pursuant to Federal Rule of Criminal Procedure
28 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the

1 sentencing judge. The Government has not made and will not make any representation as
 2 to what sentence Defendant will receive. Defendant understands that the sentencing judge
 3 may impose the maximum sentence provided by statute, and is also aware that any estimate
 4 of the probable sentence by defense counsel is a prediction, not a promise, and is not
 5 binding on the Court. Likewise, the recommendation made by the Government is not
 6 binding on the Court, and it is uncertain at this time what Defendant's sentence will be.
 7 Defendant also has been advised and understands that if the sentencing judge does not
 8 follow any of the parties' sentencing recommendations, Defendant nevertheless has no right
 9 to withdraw the plea.

10 X

11 **PARTIES' SENTENCING RECOMMENDATIONS**

12 A. **SENTENCING GUIDELINE CALCULATIONS**

13 Defendant acknowledges and understands that the U.S.S.G. does not specify a
 14 Guidelines range for a violation of 18 U.S.C. § 951 (Count 1). Defendant acknowledges
 15 and understands that where the Guidelines do not expressly specify a Guidelines range, the
 16 Court should "apply the most analogous guideline." In this matter, the parties agree that no
 17 such guideline exists and that the remaining provisions of 18 U.S.C. § 3553 control.

18 Although the parties understand that the Guidelines are only advisory and just one
 19 of the factors the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence,
 20 the parties will jointly recommend that the Court adopt the following Guidelines as to
 21 Defendant's convictions for violating 18 U.S.C. § 1001 (Counts 2 and 3):

22 **Base Offense Level [§ 2J1.2] 14**

23 **Acceptance of Responsibility [§ 3E1.1] -3**

24 B. **ACCEPTANCE OF RESPONSIBILITY**

25 Notwithstanding paragraph A above, the Government will not be obligated to
 26 recommend any adjustment for Acceptance of Responsibility if Defendant engages in
 27 conduct inconsistent with acceptance of responsibility including, but not limited to, the
 28 following:

1. Fails to truthfully admit a complete factual basis as stated in the plea at the time the plea is entered, or falsely denies, or makes a statement inconsistent with, the factual basis set forth in this agreement;
2. Falsely denies prior criminal conduct or convictions;
3. Is untruthful with the Government, the Court or probation officer; or
4. Materially breaches this plea agreement in any way.

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

The parties agree that Defendant may request or recommend additional downward adjustments, departures, including criminal history departures under USSG § 4A1.3, or sentence reductions under 18 U.S.C. § 3553. The Government is free to oppose any such downward adjustments, departures and sentence reductions not set forth in Section X, paragraph A above.

D. AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

The parties do not have an agreement as to Defendant's Criminal History Category.

E. "FACTUAL BASIS" CONSIDERED "RELEVANT CONDUCT"

The parties agree that 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 Government may recommend up to 20 months in custody. Defendant may recommend any sentence.

G. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

The parties will jointly recommend that Defendant pay a special assessment in the amount of \$100.00, to be paid forthwith at time of sentencing. The special assessment shall be paid 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."

The parties will not recommend that Defendant pay a fine.

1 H. SUPERVISED RELEASE

2 If the Court imposes a term of supervised release, Defendant agrees that he will not
3 later seek to reduce or terminate early the term of supervised release.

4 XI

5 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

6 In exchange for the Government's concessions in this plea agreement, Defendant
7 waives, to the full extent of the law, any right to appeal or to collaterally attack the
8 conviction and any lawful restitution order, except a post-conviction collateral attack based
9 on a claim of ineffective assistance of counsel. This includes, but is not limited to, any
10 argument that the statutes of conviction or Defendant's prosecution is unconstitutional and
11 any argument that the facts of this case do not constitute the crimes charged. The only
12 exception is that Defendant may appeal a custodial sentence of more than 24 months. If at
13 any time Defendant files a notice of appeal, appeals or collaterally attacks the conviction
14 or sentence in violation of this plea agreement, said action shall be a material breach of this
15 agreement as further defined below.

16 XII

17 BREACH OF THE PLEA AGREEMENT

18 Defendant acknowledges, understands and agrees that if Defendant violates or fails
19 to perform any of Defendant's obligations under this agreement, such violation or failure
20 to perform may constitute a material breach of this agreement.

21 Defendant acknowledges, understands and agrees further that the following non-
22 exhaustive list of conduct by Defendant unquestionably constitutes a material breach of
23 this plea agreement:

- 24 1. Failing to plead guilty pursuant to this agreement;
- 25 2. Failing to fully accept responsibility as established in Section X, paragraph B;
- 26 3. Failing to appear in court;
- 27 4. Attempting to withdraw the plea;
- 28 5. Failing to abide by any lawful court order related to this case;

1 6. Appealing or collaterally attacking the sentence or conviction in violation of
2 Section XI of this plea agreement; or

3 7. Engaging in additional criminal conduct from the time of arrest until the time
4 of sentencing.

5 In the event of Defendant's material breach of this plea agreement, Defendant will
6 not be able to enforce any of its provisions, and the Government will be relieved of all its
7 obligations under this plea agreement. For example, the Government may pursue any
8 charges including those that were dismissed, promised to be dismissed, or not filed as a
9 result of this agreement (Defendant agrees that any statute of limitations relating to such
10 charges is tolled as of the date of this agreement; Defendant also waives any double
11 jeopardy defense to such charges). In addition, the Government may move to set aside
12 Defendant's guilty plea. Defendant may not withdraw the guilty plea based on the
13 Government's pursuit of remedies for Defendant's breach.

14 Additionally, Defendant agrees that in the event of Defendant's material breach of
15 this plea agreement: (i) any statements made by Defendant, under oath, at the guilty plea
16 hearing (before either a Magistrate Judge or a District Judge); (ii) the stipulated factual
17 basis statement in this agreement; and (iii) any evidence derived from such statements, are
18 admissible against Defendant in any prosecution of, or any action against, Defendant. This
19 includes the prosecution of the charge(s) that is the subject of this plea agreement or any
20 charge(s) that the prosecution agreed to dismiss or not file as part of this agreement, but
21 later pursues because of a material breach by the Defendant. Additionally, Defendant
22 knowingly, voluntarily, and intelligently waives any argument under the United States
23 Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the
24 Federal Rules of Criminal Procedure, and/or any other federal rule, that the statements or
25 any evidence derived from any statements should be suppressed or are inadmissible.

26 //

27 //

28 //

XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

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

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XVI

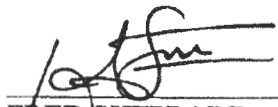
DEFENDANT SATISFIED WITH COUNSEL

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

FOR THE GOVERNMENT:


RANDY S. GROSSMAN
United States Attorney

6/13/2022
Date


FRED SHEPPARD
JOHN N. PARMLEY
Assistant U.S. Attorneys

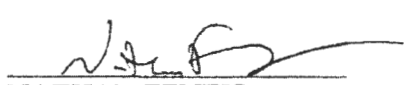
MATTHEW G. OLSEN
Assistant Attorney General
National Security Division

6/13/2022
Date


MENNO GOEDMAN
Trial Attorney

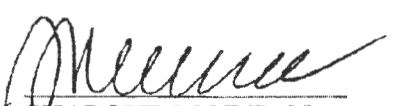
FOR THE DEFENDANT:

6/13/2022
Date


NATHAN FENEIS
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.

June 13, 2022
Date


SHAPOUR MOINIAN
Defendant