

Judge Tana Lin

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**MAR 01 2023**  
  
 AT SEATTLE  
 CLERK U.S. DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 BY \_\_\_\_\_ DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

UNITED STATES OF AMERICA,  
  
   Plaintiff,  
  
   v.  
 JERRY CHRIS VAN DYKE,  
 a/k/a JERRY WITTEN,  
  
   Defendant.

NO. CR21-0216-TL

**PLEA AGREEMENT**

The United States, through United States Attorney Nicholas W. Brown and Assistant United States Attorney J. Tate London of the Western District of Washington and Defendant Jerry Chris Van Dyke, a/k/a Jerry Witten, and his attorneys, Vanessa Pai-Thompson and Rebecca Fish, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) and (B).

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters pleas of guilty to lesser included offenses of each of the following charges contained in the Indictment:

1 Misrepresentation of Indian Produced Goods and Products, as charged in Counts 1 and 2,  
2 in violation of Title 18, United States Code, Sections 1159(a), 1159(b)(1)(B) and 2.

3 By entering these pleas of guilty, Defendant hereby waives all objections to the  
4 form of the charging document. Defendant further understands that before entering any  
5 guilty plea, Defendant will be placed under oath. Any statement given by Defendant  
6 under oath may be used by the United States in a prosecution for perjury or false  
7 statement.

8 **2. Elements of the Offenses.** The elements of the offenses to which  
9 Defendant is pleading guilty, i.e., Misrepresentation of Indian Produced Goods and  
10 Products, lesser included offenses of those charged in Counts 1 and 2 of the Indictment,  
11 are as follows:

12 *First*, Defendant knowingly aided and abetted the display and offer for sale, and  
13 the sale of goods in a manner that falsely suggested they were Indian produced, an Indian  
14 product or the product of a particular Indian and Indian tribe; and

15 *Second*, Defendant knew, at all material times, that the goods were not Indian  
16 produced, an Indian product, or the product of a particular Indian and Indian tribe.

17 **3. The Penalties.** Defendant understands that the statutory penalties  
18 applicable to the offenses to which Defendant is pleading guilty are as follows:  
19 imprisonment for not more than one (1) year, a fine of up to twenty-five thousand dollars  
20 (\$25,000.00), one (1) year of supervised release, and a mandatory twenty-five dollar  
21 (\$25.00) special assessment penalty. If Defendant receives a sentence of probation, the  
22 probationary period can be up to five (5) years.

23 Defendant understands that supervised release is a period of time following  
24 imprisonment during which Defendant will be subject to certain restrictive conditions and  
25 requirements. Defendant further understands that, if supervised release is imposed and  
26 Defendant violates one or more of the conditions or requirements, Defendant could be  
27 returned to prison for all or part of the term of supervised release that was originally

1 imposed. This could result in Defendant serving a total term of imprisonment greater  
2 than the statutory maximum stated above.

3 Defendant understands that as a part of any sentence, in addition to any term of  
4 imprisonment and/or fine that is imposed, the Court may order Defendant to pay  
5 restitution to any victim of the offense, as required by law.

6 Defendant further understands that the consequences of pleading guilty may  
7 include the forfeiture of certain property, either as a part of the sentence imposed by the  
8 Court, or as a result of civil judicial or administrative process.

9 Defendant agrees that any monetary penalty the Court imposes, including the  
10 special assessment, fine, costs, or restitution, is due and payable immediately and further  
11 agrees to submit a completed Financial Disclosure Statement as requested by the United  
12 States Attorney's Office.

13 **4. Rights Waived by Pleading Guilty.** Defendant understands that by  
14 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 15 a. The right to plead not guilty and to persist in a plea of not guilty;
- 16 b. The right to a speedy and public trial before a jury of Defendant's  
17 peers;
- 18 c. The right to the effective assistance of counsel at trial, including, if  
19 Defendant could not afford an attorney, the right to have the Court appoint one for  
20 Defendant;
- 21 d. The right to be presumed innocent until guilt has been established  
22 beyond a reasonable doubt at trial;
- 23 e. The right to confront and cross-examine witnesses against Defendant  
24 at trial;
- 25 f. The right to compel or subpoena witnesses to appear on Defendant's  
26 behalf at trial;

1 g. The right to testify or to remain silent at trial, at which trial such  
2 silence could not be used against Defendant; and

3 h. The right to appeal a finding of guilt or any pretrial rulings.

4 5. **Immigration Consequences.** Defendant recognizes that pleading guilty  
5 may have consequences with respect to Defendant's immigration status if Defendant is  
6 not a citizen of the United States. Under federal law, a broad range of crimes are grounds  
7 for removal, and some offenses make removal from the United States presumptively  
8 mandatory. Removal and other immigration consequences are the subject of a separate  
9 proceeding, and Defendant understands that no one, including Defendant's attorney and  
10 the Court, can predict with certainty the effect of a guilty plea on immigration status.  
11 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any  
12 immigration consequences that Defendant's guilty plea(s) may entail, even if the  
13 consequence is Defendant's mandatory removal from the United States.

14 6. **United States Sentencing Guidelines.** Defendant understands and  
15 acknowledges that the Court must consider the sentencing range calculated under the  
16 United States Sentencing Guidelines and possible departures under the Sentencing  
17 Guidelines together with the other factors set forth in Title 18, United States Code,  
18 Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the  
19 history and characteristics of Defendant; (3) the need for the sentence to reflect the  
20 seriousness of the offenses, to promote respect for the law, and to provide just  
21 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to  
22 criminal conduct; (5) the need for the sentence to protect the public from further crimes  
23 of Defendant; (6) the need to provide Defendant with educational and vocational training,  
24 medical care, or other correctional treatment in the most effective manner; (7) the kinds  
25 of sentences available; (8) the need to provide restitution to victims; and (9) the need to  
26 avoid unwarranted sentence disparity among defendants involved in similar conduct who  
27 have similar records. Accordingly, Defendant understands and acknowledges that:

1 a. The Court will determine Defendant's Sentencing Guidelines range  
2 at the time of sentencing;

3 b. After consideration of the Sentencing Guidelines and the factors in  
4 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the  
5 maximum term authorized by law;

6 c. The Court is not bound by any recommendation regarding the  
7 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
8 range offered by the parties or the United States Probation Department, or by any  
9 stipulations or agreements between the parties in this Plea Agreement; and

10 d. Defendant may not withdraw a guilty plea solely because of the  
11 sentence imposed by the Court.

12 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or  
13 guaranteed what sentence the Court will impose.

14 8. **Statement of Facts.** The parties agree on the following facts. Defendant  
15 admits he is guilty of the charged offenses:

16 In February 2019, the Indian Arts and Crafts Board received a complaint that  
17 artwork created by Defendant, a/k/a Jerry Witten, was being falsely marketed and sold at  
18 a Seattle gallery, as Indian produced, that is, that Defendant was an Indian artisan who  
19 produced the artwork. At all material times, Defendant aided and abetted the marketing  
20 and sale of his artwork at the gallery, Raven's Nest Treasure (RNT) and he knew that  
RNT falsely advertised and marketed his artwork as Indian made, that is, produced by  
Jerry Witten, a Nez Perce Indian, with no qualification of the term.

21 Defendant is not an enrolled member of the Nez Perce Tribe, or any federal or  
22 state recognized Indian tribe, and is not an Indian artisan registered with the Nez Perce  
23 Tribe.

24 Defendant sold his artwork to the owner of RNT, and he had done so for  
25 approximately ten years. The gallery owner provided Defendant with the materials that  
26 he used to create pendants, which included woolly mammoth ivory, antlers, animal bones  
and fossilized walrus ivory.

1                    First Purchase and Sale of Defendant's Artwork

2                    On April 16, 2019, undercover agents purchased four carved pendants for  
3 \$1,541.40 from RNT. Gallery representatives told the agents that Defendant created the  
4 pendants, which were falsely marketed and sold as Indian produced. At the time of the  
5 sale, a gallery employee falsely represented that Defendant was a Native American and  
6 provided a copy of Defendant's biography, which falsely listed him as a Nez Perce  
7 Indian.

8                    Second Purchase and Sale of Defendant's Artwork

9                    In October and November 2019, undercover agents communicated with employees  
10 and the owner of RNT regarding purchasing artwork/pendants attributed to Defendant,  
11 which were offered for sale on the gallery's ecommerce website.

12                    On November 22, 2019, agents purchased two mask pendants from the gallery for  
13 \$1,080.00, which the gallery attributed to Defendant and falsely represented as Indian  
14 produced. At the time of the sale, a gallery employee falsely represented that Defendant  
15 was a Nez Perce Indian.

16                    The parties agree that the Court may consider additional facts contained in the  
17 Presentence Report (subject to standard objections by the parties) and/or that may be  
18 presented by the United States or Defendant at the time of sentencing, and that the factual  
19 statement contained herein is not intended to limit the facts that the parties may present to  
20 the Court at the time of sentencing.

21                    9.            **Sentencing Factors.** The parties agree that the following Sentencing  
22 Guidelines provision applies to this case: the base offense level for Misrepresentation of  
23 Indian Produced Goods and Products, as charged in Counts 1 and 2 of the Indictment, is  
24 six (6), pursuant to USSG § 2B1.1(a)(2).

25                    The parties agree they are free to present arguments regarding the applicability of  
26 all other provisions of the United States Sentencing Guidelines. Defendant understands,  
27 however, that at the time of sentencing, the Court is free to reject these stipulated  
adjustments, and is further free to apply additional downward or upward adjustments in  
determining Defendant's Sentencing Guidelines range.

1           10.    **Acceptance of Responsibility.** The United States acknowledges that  
2 Defendant has assisted the United States by timely providing notice of his intention to  
3 plead guilty, thereby permitting the United States to avoid preparing for trial and  
4 permitting the Court to allocate its resources efficiently.

5           11.    **The Parties' Joint Sentencing Recommendation.** The parties agree to  
6 recommend that the Court impose no term of imprisonment. Defendant understands that  
7 this recommendation is not binding on the Court and the Court may reject the  
8 recommendation of the parties and may impose any term of imprisonment up to the  
9 statutory maximum penalty authorized by law. Defendant further understands that he  
10 cannot withdraw a guilty plea simply because of the sentence imposed by the Court.  
11 Except as otherwise provided in this Plea Agreement, the parties are free to present  
12 arguments regarding any other aspect of sentencing.

13           12.    **Abandonment of Contraband.** Defendant also agrees that, if any federal  
14 law enforcement agency seized any illegal contraband that was in Defendant's direct or  
15 indirect control, Defendant consents to the federal administrative disposition, official use,  
16 and/or destruction of that contraband.

17           13.    **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
18 the United States Attorney's Office for the Western District of Washington agrees not to  
19 prosecute Defendant for any additional offenses known to it as of the time of this Plea  
20 Agreement based upon evidence in its possession at this time, and that arise out of the  
21 conduct giving rise to this investigation. In this regard, Defendant recognizes the United  
22 States has agreed not to prosecute all of the criminal charges the evidence establishes  
23 were committed by Defendant solely because of the promises made by Defendant in this  
24 Plea Agreement. Defendant agrees, however, that for purposes of preparing the  
25 Presentence Report, the United States Attorney's Office will provide the United States  
26 Probation Office with evidence of all conduct committed by Defendant.

1           **14. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if  
2 Defendant breaches this Plea Agreement: (a) the United States may withdraw from this  
3 Plea Agreement and Defendant may be prosecuted for all offenses for which the United  
4 States has evidence; (b) Defendant will not oppose any steps taken by the United States  
5 to nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
6 Agreement; and (c) Defendant waives any objection to the re-institution of any charges  
7 that previously were dismissed or any additional charges that had not been prosecuted.

8           Defendant further understands that if, after the date of this Plea Agreement,  
9 Defendant should engage in illegal conduct, or conduct that violates any conditions of  
10 release or the conditions of confinement (examples of which include, but are not limited  
11 to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
12 pending sentencing, and false statements to law enforcement agents, the Pretrial Services  
13 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement  
14 to file additional charges against Defendant or to seek a sentence that takes such conduct  
15 into consideration by requesting the Court to apply additional adjustments or  
16 enhancements in its Sentencing Guidelines calculations in order to increase the applicable  
17 advisory Guidelines range, and/or by seeking an upward departure or variance from the  
18 calculated advisory Guidelines range. Under these circumstances, the United States is  
19 free to seek such adjustments, enhancements, departures, and/or variances even if  
20 otherwise precluded by the terms of the Plea Agreement.

21           **15. Waiver of Appellate Rights and Rights to Collateral Attacks.**

22           Defendant acknowledges that, by entering the guilty pleas required by this Plea  
23 Agreement, Defendant waives all rights to appeal from his conviction, and any pretrial  
24 rulings of the Court, and any rulings of the Court made prior to entry of the judgment of  
25 conviction. Defendant further agrees that, provided the Court imposes a custodial  
26 sentence that is within or below the Sentencing Guidelines range (or the statutory  
27



1 mandatory minimum, if greater than the Guidelines range) as determined by the Court at  
2 the time of sentencing, Defendant waives to the full extent of the law:

3 a. Any right conferred by Title 18, United States Code, Section 3742,  
4 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,  
5 restitution order, probation or supervised release conditions, or forfeiture order (if  
6 applicable); and

7 b. Any right to bring a collateral attack against the conviction and  
8 sentence, including any restitution order imposed, except as it may relate to the  
9 effectiveness of legal representation.

10 This waiver does not preclude Defendant from bringing an appropriate motion  
11 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or  
12 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

13 If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
14 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
15 any way, the United States may prosecute Defendant for any counts, including those with  
16 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
17 Agreement.

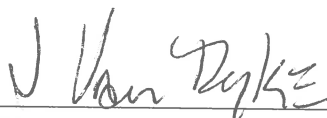
18 16. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into  
19 this Plea Agreement freely and voluntarily, and that no threats or promises were made to  
20 induce Defendant to enter pleas of guilty other than the promises contained in this Plea  
21 Agreement or set forth on the record at the change of plea hearing in this matter.

22 17. **Statute of Limitations.** In the event this Plea Agreement is not accepted  
23 by the Court for any reason, or Defendant breaches any of the terms of this Plea  
24 Agreement, the statute of limitations shall be deemed to have been tolled from the date of  
25 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the  
26 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach  
27

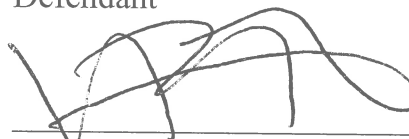
1 of the Plea Agreement by Defendant is discovered by the United States Attorney's  
2 Office.

3 18. **Completeness of Plea Agreement.** The United States and Defendant  
4 acknowledge that these terms constitute the entire Plea Agreement between the parties,  
5 except as may be set forth on the record at the change of plea hearing in this matter. This  
6 Plea Agreement binds only the United States Attorney's Office for the Western District  
7 of Washington. It does not bind any other United States Attorney's Office or any other  
8 office or agency of the United States, or any state or local prosecutor.

9 Dated this 1<sup>st</sup> day of March 2023.

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11 \_\_\_\_\_  
12 JERRY CHRIS VAN DYKE  
13 Defendant

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15 \_\_\_\_\_  
16 VANESSA PAI-THOMPSON  
17 Attorney for Defendant

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19 \_\_\_\_\_  
20 REBECCA FISH  
21 Attorney for Defendant

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23 \_\_\_\_\_  
24 TODD GREENBERG  
25 Assistant United States Attorney

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27 \_\_\_\_\_  
J. TATE LONDON  
Assistant United States Attorney