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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO VENUE

11 UNITED STATES OF AMERICA)

12 v.)

13)
14 JOSEPH B. EISENBERG,)

15 Defendant.)
16

CR 04-0296 MJJ

PLEA AGREEMENT

17 **PLEA AGREEMENT**

18 The United States of America and Joseph B. Eisenberg (“defendant”) hereby enter into
19 the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal
20 Procedure (“Fed. R. Crim. P.”):

21 **RIGHTS OF DEFENDANT**

22 1. The defendant understands his rights:

23 (a) to be represented by an attorney;

24 (b) to be charged by Indictment;

25 (c) to plead not guilty to any criminal charge brought against him;

26 (d) to have a trial by jury, at which he would be presumed not

27 guilty of the charge and the United States would have to prove every essential element of
28 the charged offense beyond a reasonable doubt for him to be found guilty;

- 1 (e) to confront and cross-examine witnesses against him and to
2 subpoena witnesses in his defense at trial;
- 3 (f) not to be compelled to incriminate himself;
- 4 (g) to appeal his conviction, if he is found guilty at trial; and
- 5 (h) to appeal the imposition of sentence against him.

6 **AGREEMENT TO PLEAD GUILTY**
7 **AND WAIVE CERTAIN RIGHTS**

8 2. The defendant waives the rights set out in Paragraph 1(b)-(g) above. The
9 defendant agrees to have his sentence determined under the United States Sentencing Guidelines
10 (“U.S.S.G.”) and hereby waives all constitutional challenges to the validity of the U.S.S.G. The
11 defendant waives any right to have facts that determine his sentencing factors under the U.S.S.G.
12 (including offense level, base fine amount, culpability score, guideline fine range, and any
13 specific offense characteristic or other enhancement or adjustment) alleged in an indictment and
14 found by a jury beyond a reasonable doubt. The defendant agrees that facts that determine his
15 sentencing factors will be found by the court at sentencing by a preponderance of the evidence
16 and that the court may consider any reliable evidence, including hearsay, in making such
17 determinations. Further, pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment
18 and plead guilty at arraignment to a one-count Information to be filed in the United States
19 District Court for the Northern District of California. The Information will charge the defendant
20 with participating in a combination and conspiracy to suppress and eliminate competition by
21 maintaining and increasing the prices of certain rubber chemicals to be sold in the United States
22 and elsewhere, beginning in or about July 1995 and continuing until in or about February 2000,
23 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

24 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
25 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
26 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

27 **FACTUAL BASIS FOR OFFENSE CHARGED**

28 4. Had this case gone to trial, the United States would have presented evidence to

1 prove the following facts:

2 (a) For the purposes of the Plea Agreement, the “relevant period” is that
3 period beginning in or about July 1995 and continuing until in or about February 2000.
4 During the relevant period, the defendant was an Executive Vice President of Crompton
5 Corporation (“Crompton”), an entity organized and existing under the laws of
6 Massachusetts and then Delaware and with its principal place of business in Middlebury,
7 Connecticut. During the relevant period, Crompton was engaged in the manufacture and
8 sale of rubber chemicals in the United States and elsewhere.

9 (b) During the relevant period, the defendant participated in a conspiracy with
10 other persons and entities engaged in the manufacture and sale of rubber chemicals, the
11 primary purpose of which was to maintain and raise the prices of certain rubber
12 chemicals sold in the United States and elsewhere. In furtherance of the conspiracy, the
13 defendant participated in conversations and attended meetings with representatives of
14 other major rubber chemical firms. During such meetings and conversations, defendant
15 and co-conspirators agreed to raise and maintain prices of certain rubber chemicals to be
16 sold in the United States and elsewhere.

17 (c) During the relevant period, rubber chemicals sold by one or more of the
18 conspirator firms, and equipment and supplies necessary to the production and
19 distribution of rubber chemicals, as well as payments for rubber chemicals, traveled in
20 interstate and foreign commerce. The business activities of Crompton and its co-
21 conspirators in connection with the production and sale of rubber chemicals affected by
22 this conspiracy were within the flow of, and substantially affected, interstate and foreign
23 trade and commerce.

24 (d) Rubber chemicals affected by this conspiracy were sold by one or more of
25 the conspirators to customers located in this District.

26 **POSSIBLE MAXIMUM SENTENCE**

27 5. The defendant understands that the maximum penalty that may be imposed
28 against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- 1 (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);
2 (b) a fine in an amount equal to the greatest of:
3 (1) \$350,000,
4 (2) twice the gross pecuniary gain the conspirators derived from the
5 crime, or
6 (3) twice the gross pecuniary loss caused to the victims of the crime
7 by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d));
8 and

9 (c) a term of supervised release of one (1) year following any term of
10 imprisonment. If the defendant violates any condition of supervised release, the
11 defendant could be imprisoned for the entire term of supervised release (18 U.S.C.
12 § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3), and U.S.S.G. § 5D1.2(a)(3)).

13 6. In addition, the defendant understands that:

- 14 (a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution
15 to the victims of the offense; and
16 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is
17 required to order the defendant to pay a \$100.00 special assessment upon conviction for
18 the charged crime.

19 **SENTENCING GUIDELINES**

20 7. Sentencing for the offense to be charged will be conducted pursuant to
21 the U.S.S.G. Manual in effect on the day of sentencing, unless, as authorized by U.S.S.G.
22 § 1B1.11, the court determines that use of the Guidelines Manual in effect on the date that the
23 defendant is sentenced would violate the ex post facto clause of the United States Constitution.
24 If the court makes such a determination, the court shall use the Guidelines Manual in effect on
25 February 2000, the last date that the offense of conviction was committed. Pursuant to U.S.S.G.
26 § 2R1.1(b)(2), the United States and the defendant agree that, for purposes of sentencing, the
27 appropriate volume of affected commerce attributable to the defendant is over \$100 million. As
28 authorized by U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that

1 the defendant provides to the United States pursuant to this Plea Agreement will not be used to
2 increase the volume of affected commerce attributable to the defendant or in determining the
3 defendant's applicable sentencing guidelines range, except to the extent provided in U.S.S.G. §
4 1B1.8(b).

5 **SENTENCING AGREEMENT**

6 8. The defendant understands that the sentence to be imposed on him is within the
7 sole discretion of the sentencing judge and that, pursuant to Fed. R. Crim. P. 11(c)(3)(B), he will
8 have no right to withdraw his guilty plea if the Court imposes any sentence inconsistent with the
9 recommendation contained in this Plea Agreement or any recommendation made at the time of
10 sentencing.

11 9. Based on the information now known to it, the United States agrees that it will
12 make a motion, pursuant to U.S.S.G. § 3E1.1, for a downward adjustment of three levels for
13 acceptance of responsibility due to the defendant's timely notification of his intention to enter a
14 guilty plea.

15 10. The defendant understands that the Court will order him to pay a \$100 special
16 assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3 in addition to any fine
17 imposed.

18 11. Pursuant to Fed R. Crim. P. 11(c)(1)(B), the United States agrees that if, in its
19 sole and exclusive judgment, it decides that the defendant has cooperated fully and truthfully,
20 provided substantial assistance to law enforcement authorities within the meaning of U.S.S.G.
21 § 5K1.1 in any federal antitrust investigation involving any product sold by Crompton and its
22 predecessors and subsidiaries, and otherwise complied fully with this Agreement, it will file with
23 the Court a motion, pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553. The motion will
24 describe the nature and extent of the defendant's cooperation and recommend a downward
25 departure from the Guidelines' fine and term of imprisonment in this case.

26 12. The defendant understands and agrees that the decision of the United States on
27 whether to file a motion pursuant to U.S.S.G. § 5K1.1, as described in Paragraph 11 above, is
28 based on its sole and exclusive decision of whether the defendant has provided substantial

1 assistance. The defendant understands and agrees that the decision will be binding on him. The
2 defendant understands that the decision of the United States on whether to file such a motion, or
3 the extent of the departure recommended by any motion, will not depend on whether convictions
4 are obtained in any case. The defendant also understands that the Court will not be bound by
5 any recommendation made by the United States.

6 13. Subject to the ongoing, full, and truthful cooperation of the defendant, as
7 described in Paragraph 14 of this Plea Agreement, and before sentencing in the case, the United
8 States will fully advise the Court and the Probation Office of the fact, manner, and extent of the
9 defendant's cooperation and his commitment to prospective cooperation with the United States'
10 investigation and prosecutions, all material facts relating to the defendant's involvement in the
11 charged offense, and all other relevant conduct. To enable the Court to have the benefit of all
12 relevant sentencing information, the United States may request, and the defendant will not
13 oppose, that sentencing be postponed until his cooperation is complete.

14 **DEFENDANT'S COOPERATION**

15 14. The defendant will cooperate fully and truthfully with the United States in the
16 prosecution of this case, the conduct of the current federal investigation of violations of federal
17 antitrust and related criminal laws involving the manufacture or sale of rubber chemicals in the
18 United States and elsewhere, and any litigation or other proceedings arising or resulting from
19 any such investigation to which the United States is a party ("Federal Proceeding"). The
20 ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

21 (a) producing in the United States all documents, including claimed personal
22 documents, and other materials, wherever located, in the possession, custody, or control
23 of the defendant, requested by attorneys and agents of the United States;

24 (b) making himself available for interviews, not at the expense of the United
25 States, upon the request of attorneys and agents of the United States;

26 (c) responding fully and truthfully to all inquiries of the United States in
27 connection with any Federal Proceeding, without falsely implicating any person or
28 intentionally withholding any information, subject to the penalties of making false

1 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

2 (d) otherwise voluntarily providing the United States with any material or
3 information, not requested in (a) - (c) of this paragraph, that he may have that is related to
4 any Federal Proceeding; and

5 (e) when called upon to do so by the United States in connection with any
6 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the
7 United States, fully, truthfully, and under oath, subject to the penalties of perjury (18
8 U.S.C. § 1621), making false statements or declarations in grand jury or court
9 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of
10 justice (18 U.S.C. § 1503).

11 **AGREEMENT BY THE UNITED STATES**

12 15. Subject to the full, truthful, and continuing cooperation of the defendant, as
13 described in Paragraph 14 of this Plea Agreement, and upon the Court's acceptance of the guilty
14 plea called for by this Plea Agreement and the imposition of sentence, the United States will not
15 bring further criminal charges against the defendant for any act or offense committed before the
16 date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy
17 involving the manufacture or sale of rubber chemicals ("Relevant Offense"). The
18 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation
19 of the federal tax or securities laws, or to any crime of violence.

20 **REPRESENTATION BY COUNSEL**

21 16. The defendant has reviewed all legal and factual aspects of this case with his
22 attorney and is fully satisfied with his attorney's legal representation. The defendant has
23 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory
24 explanations from his attorney concerning each paragraph of this Plea Agreement and
25 alternatives available to the defendant other than entering into this Plea Agreement. After
26 conferring with his attorney and considering all available alternatives, the defendant has made a
27 knowing and voluntary decision to enter into this Plea Agreement.

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2 **VOLUNTARY PLEA**

3 17. The defendant's decision to enter into this Plea Agreement and to tender a plea of
4 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
5 or representations other than the representations contained in this Plea Agreement and the Joseph
6 Eisenberg Cooperation Agreement, filed separately with the Court. The United States has made
7 no promises or representations to the defendant as to whether the Court will accept or reject the
8 recommendations contained within this Plea Agreement.

9 **VIOLATION OF PLEA AGREEMENT**

10 18. The defendant agrees that, should the United States determine in good faith,
11 during the period that any Federal Proceeding is pending, that the defendant has failed to provide
12 full and truthful cooperation, as described in Paragraph 14 of this Plea Agreement, or has
13 otherwise violated any provision of this Plea Agreement, the United States will notify the
14 defendant or his counsel in writing by personal or overnight delivery or facsimile transmission
15 and may also notify his counsel by telephone of its intention to void any of its obligations under
16 this Plea Agreement (except its obligations under this paragraph), and the defendant shall be
17 subject to prosecution for any federal crime of which the United States has knowledge including,
18 but not limited to, the substantive offenses relating to the investigation resulting in this Plea
19 Agreement. The defendant may seek Court review of any determination made by the United
20 States under this Paragraph to void any of its obligations under the Plea Agreement. The
21 defendant agrees that, in the event that the United States is released from its obligations under
22 this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense,
23 the statute of limitations period for such offense will be tolled for the period between the date of
24 the signing of this Plea Agreement and six (6) months after the date the United States gave
25 notice of its intent to void its obligations under this Plea Agreement.

26 19. The defendant understands and agrees that in any further prosecution of him
27 resulting from the release of the United States from its obligations under this Plea Agreement
28 based on the defendant's violation of the Plea Agreement, any documents, statements,

1 information, testimony, or evidence provided by him to attorneys or agents of the United States,
2 federal grand juries, or courts, and any leads derived therefrom, may be used against him in any
3 such further prosecution. In addition, the defendant unconditionally waives his right to
4 challenge the use of such evidence in any such further prosecution, notwithstanding the
5 protections of Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

6 **ENTIRETY OF AGREEMENT**

7 20. This Plea Agreement and the Joseph Eisenberg Cooperation Agreement constitute
8 the entire agreement between the United States and the defendant concerning the disposition of
9 the criminal charge in this case. This Plea Agreement cannot be modified except in writing,
10 signed by the United States and the defendant.

11 21. The undersigned attorneys for the United States have been authorized by the
12 Attorney General of the United States to enter this Plea Agreement on behalf of the United
13 States.

14 22. A facsimile signature shall be deemed an original signature for the purpose of
15 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of
16 executing this Plea Agreement.

17
18 DATED: 9/9/04

Respectfully submitted,

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20
21 BY: /s/
Joseph B. Eisenberg
Defendant

BY: /s/
Michael L. Scott
Jeane Hamilton
Victor Ali
Attorneys
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23
24 /s/
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