

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**FILED**  
At Albuquerque NM

OCT 02 2006

**MATTHEW J. DYKMAN**  
CLERK

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED NUCLEAR SCIENTIFIC )  
 SUPPLIES, LLC, a corporation, )  
 )  
 Defendant. )  
 )

NO. 06-2008 ~~JPL~~FG

**PLEA AGREEMENT**

The Office of the United States Attorney for the District of New Mexico and the United States Department of Justice, Office of Consumer Litigation (hereinafter referred to as the "government") and **UNITED NUCLEAR SCIENTIFIC SUPPLIES, LLC** (hereinafter referred to as the "defendant") enter into the following agreement.

1. The defendant will plead guilty to a three count Information that will charge violations of Title 15, United States Code, Sections 1263(a) and 1264(a) and Title 18, United States Code, Section 2 (introducing or delivering for introduction and aiding and abetting the introduction and delivering for introduction into interstate commerce of misbranded or banned hazardous substances). The government agrees that no further federal prosecution will be brought under Title 15 of the United States Code with respect to the defendant's delivery of banned hazardous substances in interstate commerce between May 1, 2002 and August 2, 2006. The government also agrees that it will not bring any Title 15 hazardous-substance related criminal charges against Robert Lazar or Joy White directly arising out of their involvement in the defendant's delivery of banned hazardous substances in interstate commerce between May 1, 2002 and August 2, 2006.

2. The defendant understands that this agreement is only binding on the Office of the United States Attorney for the District of New Mexico and the Office of Consumer Litigation of the United States Department of Justice. Nothing in this agreement shall bind any other federal, state or local agency.
3. The defendant understands that the violations of Title 15, United States Code, Section 1263(a) to which defendant is agreeing to plead guilty are Class B misdemeanors. See 15 U.S.C. § 1264(a) and 18 U.S.C. § 3559(a)(7). Consequently, the United States Sentencing Guidelines do not apply to this case. See U.S.S.G. §§ 1B1.9.
4. The defendant, through its defense counsel, is fully apprised of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742. In the event the Court accepts the plea, as part of this agreement, both the defendant and the government hereby waive all rights to appeal all non-jurisdictional issues including, but not limited to, any issues relating to pre-trial motions, hearings and discovery and any issues relating to the negotiation, taking or acceptance of the guilty plea or the factual basis for the plea. Both the defendant and the government hereby waive all rights to appeal all sentencing issues except in the following limited circumstances: if the sentence is not in accordance with this plea agreement; or if the sentence is constitutionally defective. Defendant also retains the right to appeal any sentence imposed which exceeds the maximum statutory penalty. The waivers set out above relate to any issues which now exist or which may arise in the future. The defendant agrees to these waivers in order to cause the government to accept the provisions and stipulations of this plea agreement, to avoid trial, and to have this case

finally concluded. The defendant understands that at the conclusion of the sentencing hearing, the Court will note that the defendant's appeal rights are limited by this waiver. No assurances or promises have been made by any party as to what the defendant's ultimate sentence will be.

5. The defendant acknowledges being guilty of the crimes to which a plea is being entered, and further states that the government has not made representations which are not included in this document as to the sentence to be imposed. The defendant further agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.
6. The defendant agrees, as part of this agreement, that its directors, officers and agents will submit to interviews by the United States Attorney's Office's Financial Litigation Unit regarding the defendant's financial status. Pursuant to Title 18, United States Code, Section 3664(d)(3), the defendant also agrees to complete the required financial affidavit, fully describing the defendant's financial resources within 10 days of the guilty plea. The defendant will submit the original affidavit, on forms prescribed by the probation office, to the U.S. Probation Office with a copy to the United States Attorney's Office.
7. The defendant understands that nothing contained in this document is meant to limit the rights and authority of the United States of America to take any civil, tax or administrative action against the defendant including, but not limited to, asset forfeiture, and any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with government agencies. Further, any recommendation in this

document as to the amount of loss or restitution is not binding upon the parties in any civil or administrative action by the government against the defendant.

8. The defendant agrees to enter into a consent decree of permanent injunction that will be submitted to the Court.

9. The parties stipulate and agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt:

a. On or about June 11, 2003, **UNITED NUCLEAR SCIENTIFIC SUPPLIES, LLC**, became a corporation under the laws of the state of New Mexico. From at least May 2002, **UNITED NUCLEAR SCIENTIFIC SUPPLIES, LLC** has been in the business of selling to the general public the chemicals and supplies needed to manufacture fireworks.

b. In or about May 2002, in Edgewood, within the District of New Mexico, defendant **UNITED NUCLEAR SCIENTIFIC SUPPLIES, LLC** sent one or more packages to a customer in Maryland, which package(s) contained approximately two-and-a-half (2 ½) pounds of potassium perchlorate, approximately one-and-a-half (1 ½) pounds of aluminum (German dark) powder, approximately one hundred and ten (110) cardboard tubes, approximately two hundred and twenty (220) end plugs, and twenty (20) feet of cannon fuse. Based on the type and quantity of materials the customer ordered, defendant knew or had reason to know that they were components intended to produce banned hazardous substances.

c. In or about December 2002, in Edgewood, within the District of New Mexico,

defendant **UNITED NUCLEAR SCIENTIFIC SUPPLIES, LLC** sent one or more packages to a customer in Maryland, which package(s) contained approximately four (4) pounds of potassium perchlorate, approximately two (2) pounds of aluminum (German dark) powder, approximately one-half (½) pound of sulfur, ten (10) feet of fuse, approximately four hundred and eighty-nine (489) end caps, and approximately two hundred and forty (240) tubes. Based on the type and quantity of materials the customer ordered, defendant knew or had reason to know that they were components intended to produce banned hazardous substances.

- d. In or about May 2003, in Edgewood, within the District of New Mexico, defendant **UNITED NUCLEAR SCIENTIFIC SUPPLIES, LLC** sent one or more packages to a customer in Maryland, which package(s) contained approximately five (5) pounds of potassium perchlorate, approximately two (2) pounds of aluminum (German dark) powder, approximately one-half (½) pound of sulfur, fifty (50) feet of fuse, approximately two thousand (2000) end caps, and approximately one thousand (1000) tubes. Based on the type and quantity of materials the customer ordered, defendant knew or had reason to know that they were components intended to produce banned hazardous substances.
- e. As a result of the activities described above, defendant agrees that defendant did knowingly and intentionally introduce, or deliver for introduction, into interstate commerce, misbranded or banned hazardous substances. The defendant and the government agree that the facts set forth above are true.

10. As to counts one, two and three of the Information, the defendant admits to violating Title 15, United States Code, Section 1263(a) and 1264(a), and Title 18, United States Code, Section 2, and admits there is a factual basis for the plea and further fully understands that the elements of the crime are:
  - a. the defendant introduced or delivered for introduction and aided and abetted the introduction and delivery for introduction;
  - b. into interstate commerce;
  - c. misbranded hazardous substances or banned hazardous substances.
11. The maximum penalty for each offense is a fine of \$10,000.00, the costs of prosecution, and an assessment in the amount of \$50.00. At the time the guilty plea is entered, the defendant shall admit to the Court that the defendant is in fact guilty of the offenses charged in the Information. The defendant understands that the total, maximum possible sentence for all charges is the combination of penalties described above; that is, fines totaling \$30,000, the costs of prosecution, and an assessment totaling \$150.00.
12. The United States makes no promises as to the sentence to be imposed. The defendant understands and agrees to be sentenced based on facts to be found by the sentencing judge by a preponderance of the evidence and agrees facts essential to the punishment need not be: charged in the Information; proven to a jury; or proven beyond a reasonable doubt.
13. The defendant agrees that the Court will determine the appropriate sentence after considering a variety of factors, including: the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just

punishment for the offense; the need for the sentence to afford adequate deterrence to criminal conduct; the need for the sentence to protect the public from further crimes of the defendant; the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense. The Court may also consider other information including any information concerning the background and conduct of the defendant.

14. During plea negotiations the parties may have discussed how various factors could impact the Court's sentencing decision. The parties agree, however, that those discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the Court. The defendant understands that the Court is not a party to and is not bound by this agreement nor any recommendations made by the parties. Thus, the Court is free to impose upon the defendant any sentence up to and including the maximum sentence of fines totaling \$30,000.00, the costs of prosecution, and an assessment totaling \$150.00.
15. The defendant further understands that the defendant will have no right to withdraw its guilty plea if the sentence imposed is other than as hoped for or anticipated. The defendant's attorney and the United States may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information to the Probation Office for use in preparing the presentence report.
16. The defendant understands that the Court may impose a fine pursuant to the Sentencing

Reform Act of 1984. The willful failure to pay any fine imposed by the Court, in full, may be considered a breach of this plea agreement. Further, the defendant acknowledges that willful failure to pay the fine may subject the defendant to additional criminal violations and civil penalties pursuant to Title 18, United States Code, Sections 3611, et seq. The defendant understands that under the alternative fine section of Title 18, United States Code, Section 3571, the maximum fine quoted above may be increased if the District Court finds that any person derived pecuniary gain or suffered pecuniary loss from the offense and that the maximum fine to be imposed, if the Court elects to proceed in this fashion, could be twice the amount of the gross gain or twice the amount of the gross loss resulting from the offense. The defendant understands that the Court will impose a special assessment of \$150.00 pursuant to the provisions of Title 18, United States Code, Section 3013. No later than the date of sentencing, the defendant's counsel shall mail a check in payment of the special assessment directly to the Clerk, United States District Court District of New Mexico. This check shall be made payable to "Clerk, United States District Court." Counsel for the defendant shall provide a copy of the special assessment check to the United States Attorney's Office for the District of New Mexico and the Office of Consumer Litigation of the Department of Justice at the time of sentencing certifying compliance with this provision of the plea agreement. If the defendant intentionally fails to make this payment, or pays with an insufficient funds check, it is understood that this failure may be treated as a breach of this plea agreement and may result in further prosecution or the filing of additional criminal charges.

17. The defendant agrees that any fine imposed by the Court will be due and payable immediately. The defendant hereby stipulates that any fine imposed by the Court is not



dischargeable in any case commenced by the defendant or the defendant's creditors pursuant to the Bankruptcy Code. The defendant agrees not to attempt to avoid paying any fine imposed by the Court through any proceeding pursuant to the United States Bankruptcy Code, and stipulates that enforcement of any fine obligation by the United States or a victim is not barred or affected by the automatic stay provisions of the United States Bankruptcy Code (Title 11, United States Code, Section 362).

18. The defendant acknowledges and fully understands the following rights: the right to plead not guilty to the charges; the right to be tried by a court of law in a public and speedy trial; the right to file pre-trial motions, including motions to suppress evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the entire case against the defendant beyond a reasonable doubt; the right not to present any evidence; the right at trial to confront and cross-examine adverse witnesses; the right to present evidence; and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph. The defendant's counsel is aware of these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.
19. The defendant's directors and officers are fully satisfied with the representation received from defense counsel. Defense counsel has completely and satisfactorily explored all areas relative to the government's case and any defenses.
20. Following defendant's guilty plea, a Presentence Report will be prepared. At the time of sentencing, the parties reserve the right to allocution regarding the appropriate sentence to


be imposed. Each party also reserves the right to bring any misstatements of fact made either by the other party or on that party's behalf to the attention of the Court at the time of sentencing.

21. In interpreting this document, any drafting errors or ambiguities shall not automatically be construed against any party, whether or not the party was involved in drafting this document.
22. This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case or the agreements, recommendations or stipulations contained herein. In addition, the defendant acknowledges that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty. The defendant's agreements, recommendations and stipulations as set forth above are made in exchange for the United States' agreements, recommendations and stipulations set forth in this document.
23. The defendant acknowledges that the defendant has voluntarily entered into both this plea and these agreements, recommendations and stipulations. The defendant further acknowledges that this guilty plea is made of the defendant's own free will because the defendant is, in fact, guilty of the conduct specified in section two above.
24. The defendant further understands that should defendant withdraw from this agreement prior to pleading guilty to the charge identified in paragraph 1 above, the government will be released from its obligations under this agreement. In such a case, the defendant shall

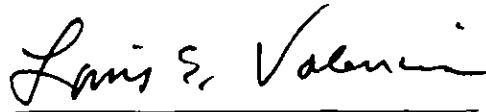
thereafter be subject to prosecution for any federal criminal violation of which the government has knowledge, including, but not limited to, the criminal activities at issue in this case, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads therefrom may be used against the defendant directly in the government's case in chief. Moreover, any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by the defendant may be commenced and the defendant agrees to waive any statute of limitations that would otherwise expire after the defendant signs this agreement. With respect to any such prosecution, the defendant further waives any right to claim that statements made by its directors, officers and agents before or after the execution of this agreement, including any statements made pursuant to any prior agreement between the defendant, the government and/or any other United States Attorney's Office, or any leads from those statements, should be suppressed under that prior agreement(s) or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), U.S.S.G. § 1B1.8, or otherwise.

25. The defendant agrees that if, between the time of signing this document and the sentencing the defendant engages in any criminal activity, the government shall be released from any obligations or limits on its power to prosecute the defendant created by this document.


9/12/06  
Date

  
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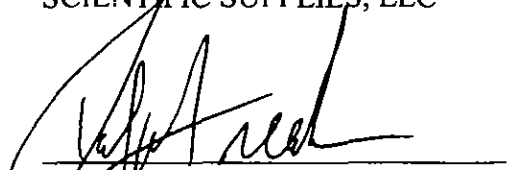
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