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NOV 18 2010

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES N. MATTER, Clerk  
By: *J. Matter* Deputy Clerk

UNITED STATES OF AMERICA	)	Criminal No.: 1:10-CR-464
	)	
v.	)	Filed:
	)	
THOMAS E. CARR,	)	Violation: 15 U.S.C. § 1
	)	
Defendant.	)	
_____	)	

**PLEA AGREEMENT**

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

**RIGHTS OF DEFENDANT**

1. The defendant understands his rights:
  - (a) to be represented by an attorney;
  - (b) to plead not guilty to any criminal charge brought against him;
  - (c) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for

him to be found guilty;

(d) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

(e) not to be compelled to incriminate himself;

(f) to appeal his conviction, if he is found guilty; and

(g) to appeal the imposition of sentence against him.

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

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(f) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or

collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant will plead guilty to the one-count Indictment returned against him in this case on November 2, 2010 in the United States District Court for the Northern District of Georgia. The Indictment charges the defendant with participating in a conspiracy to suppress and eliminate competition by allocating customers for the sale of commercial and institutional food service equipment component hardware, including walk-in refrigeration equipment, in the United States and elsewhere, beginning in or about early 2004 and continuing thereafter at least through December 2008, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

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

**FACTUAL BASIS FOR OFFENSE CHARGED**

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period”

is that period beginning in or about early 2004 and continuing thereafter at least through December 2008. During the relevant period, the defendant was the president of a corporate co-conspirator, an entity organized and existing under the laws of the State of Delaware and with its principal place of business in Lakewood, New Jersey. During the relevant period, the corporate co-conspirator was a manufacturer and seller of commercial and institutional food service equipment component hardware, including walk-in refrigeration equipment, in the United States and elsewhere. Affected products included fabricated parts such as cafeteria hardware, equipment legs and casters, and fabrication supplies, and walk-in refrigeration components such as metal racks, door hinges, handles, latches and closers, and panel fasteners.

(b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in the manufacture and sale of commercial and institutional food service equipment component hardware, the primary purpose of which was to suppress and eliminate competition by allocating customers for the sale of commercial and institutional food service equipment component

hardware, including walk-in refrigeration equipment, in the United States and elsewhere. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of another major commercial and institutional food service equipment component hardware manufacturer. During such meetings and conversations, agreements were reached to suppress and eliminate competition by allocating customers for the sale of commercial and institutional food service equipment component hardware, including walk-in refrigeration equipment, in the United States and elsewhere.

(c) During the relevant period, commercial and institutional food service equipment component hardware sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of commercial and institutional food service equipment component hardware, as well as payments for commercial and institutional food service equipment component hardware, traveled in interstate and foreign commerce. The business activities of the defendant and co-conspirators in connection with the manufacture and sale of commercial and institutional food service equipment component hardware that were the subjects of this conspiracy were within the flow

of, and substantially affected, interstate and foreign trade and commerce.

(d) This conspiracy was formed and carried out, in part, within the Northern District of Georgia, Atlanta Division. Some of the conspiratorial meetings and discussions described above took place in Atlanta. The commercial and institutional food service equipment component hardware that was the subject of this conspiracy was sold by one or more of the conspirators to customers in this District.

**POSSIBLE MAXIMUM SENTENCE**

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

- (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$1,000,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571 (b) and (d)); and
- (c) a term of supervised release of three (3) years following any

term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

6. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

### **SENTENCING GUIDELINES**

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that

although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

### **SENTENCING AGREEMENT**

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence at the lower end of the advisory guidelines range of Offense Level 15 and no criminal fine (“the recommended sentence”). The United States will not object to the defendant’s request that he be allowed to self-surrender to the assigned prison facility on the specified date. The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

9. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommended sentence



contained in this Plea Agreement, he nevertheless has no right to withdraw his plea of guilty.

**GOVERNMENT'S AGREEMENT**

10. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of commercial and institutional food service equipment component hardware, including walk-in refrigeration equipment ("Relevant Offense"). The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

**REPRESENTATION BY COUNSEL**

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

**VOLUNTARY PLEA**

12. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

**VIOLATION OF PLEA AGREEMENT**

13. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense shall be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

14. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its

obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

**ENTIRETY OF AGREEMENT**


15. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

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

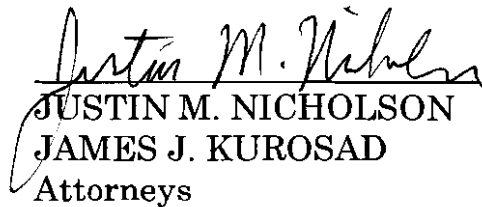
17. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: 11-18-2010

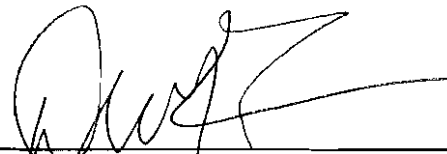
Respectfully submitted,

BY: 

THOMAS E. CARR  
Defendant

BY: 

JUSTIN M. NICHOLSON  
JAMES J. KUROSAD  
Attorneys



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