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FILED

AUG 30 2002

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA)

No. CR 02-0234

13 v.)

PLEA AGREEMENT

14 JACQUES JOURDAN,)

15 Defendant.)

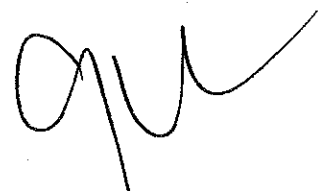
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17 The United States of America and JACQUES JOURDAN ("defendant"), with
18 the advice of counsel, enter into the following Plea Agreement under Rule
19 11(e)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

20 RIGHTS OF DEFENDANT

21 1. The defendant understands and agrees that by pleading guilty he is
22 giving up the following rights which he would have if the case went to trial:

23 (a) The rights to plead not guilty, to be presumed innocent, and to
24 require the government to prove all of the elements of the crime
25 beyond a reasonable doubt;

26 (b) The right to a speedy and public jury trial with the assistance of



1 an attorney, including an attorney appointed by the Court if he
2 could not afford one;

3 (c) The right to a unanimous jury verdict;

4 (d) The right to confront and cross-examine government witnesses;

5 (e) The rights to testify on his own behalf, to present evidence
6 and/or witnesses, and to compulsory process;

7 (f) The right not to testify or have adverse inferences drawn if he
8 does not testify;

9 (g) The rights to pursue any affirmative defenses, Fourth or Fifth
10 Amendment claims, or any other claims presented or that could
11 be presented in any pretrial or post-trial motion;

12 (h) The rights to both appeal and collaterally attack, including the
13 filing of a motion pursuant to 28 U.S.C. § 2255, the guilty plea,
14 the judgment of guilt, orders of the Court, and any part of the
15 sentence imposed by the Court;

16 (i) The right to be indicted by a grand jury for the felony charges to
17 which he is pleading guilty;

18 (j) The right, as a citizen of France, to decline to accept service of
19 the Summons in this case, and to contest the jurisdiction of the
20 United States to prosecute this case against him in United
21 States District Court; and

22 (k) The right to be charged in the State and District where the
23 offense occurred.

24 **WAIVER OF RIGHTS AND OFFENSE CHARGED**

25 2. Subject to the express condition stated in this paragraph, the defendant
26 waives each of the rights set out in Paragraph 1(a)-(k), including all jurisdictional

1 defenses to the prosecution of this case, and agrees voluntarily to consent to the
2 jurisdiction of the United States to prosecute this criminal case against him in
3 United States District Court. Under Rule 7(b), Fed. R. Crim. P., the defendant will
4 waive indictment. The defendant will plead guilty to a one-count Information filed
5 in the United States District Court for the Northern District of California. It is
6 expressly understood that all waivers of rights are conditioned on the Court
7 accepting this Plea Agreement. If this Plea Agreement is rejected or voided, the
8 defendant's waivers likewise will be rendered void, and his rights will remain in
9 full force and effect. The Information will charge the defendant with participating
10 in a conspiracy to suppress and eliminate competition by allocating market shares
11 of monochloroacetic acid and sodium monochloroacetate (collectively referred to as
12 "MCAA") to be sold in the United States and elsewhere, beginning in or about
13 January 1997 and continuing until in or about August 1999, in violation of the
14 Sherman Antitrust Act, 15 U.S.C. § 1.

15 3. Under the terms of this Plea Agreement, the defendant will plead
16 guilty to the criminal charge described in Paragraph 2, and will make a factual
17 admission of guilt to the Court in accordance with Rule 11, Fed. R. Crim. P., as set
18 forth in Paragraph 4.

19 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

22 (a) For purposes of this Plea Agreement, the "relevant period"
23 begins in or about January 1997 and continues until in or about August 1999.
24 During the relevant period, the defendant was a Department Head of the
25 Chlorine, Vinyl, and Solvents Division of Elf Atochem S.A. ("Elf"), a
26 corporation organized and existing under the laws of France, with its

1 principal place of business in Paris, France. During the relevant period, Elf
2 was a producer of MCAA and was engaged in the sale of MCAA in the United
3 States and elsewhere. MCAA is a reactive compound that is used to form a
4 number of intermediate chemicals. Markets for MCAA and its derivatives
5 include drilling fluids, plastic stabilizers, herbicides, and pharmaceuticals. In
6 his capacity as a Department Head of Elf's Chlorine, Vinyl, and Solvents
7 Division, the defendant was responsible for the sales and marketing of MCAA
8 worldwide;

9 (b) During the relevant period, the defendant participated in a
10 conspiracy among major MCAA producers, the primary term of which was to
11 allocate the market shares of MCAA to be sold in the United States and
12 elsewhere. In furtherance of the conspiracy, the defendant engaged in
13 discussions and attended meetings with representatives of other major MCAA
14 producers. During these discussions and meetings, agreements were reached
15 to allocate the market shares for MCAA to be sold in the United States and
16 elsewhere; and

17 (c) During the relevant period, MCAA sold by one or more of the
18 conspirator firms, and equipment and supplies necessary to the production
19 and distribution of MCAA, as well as payments for MCAA, traveled in
20 interstate and foreign commerce. The business activities of the defendant, his
21 current employer, Elf, and their coconspirators in connection with the
22 production and sale of MCAA affected by this conspiracy were within the flow
23 of, and substantially affected, interstate and foreign trade and commerce.

24 POSSIBLE MAXIMUM SENTENCE

25 5. The defendant understands that the maximum penalty that may be
26 imposed against him upon conviction for a violation of the Sherman Antitrust Act

1 is a term of imprisonment of three years (15 U.S.C. § 1); a term of supervised
2 release of one year to follow imprisonment (18 U.S.C. §§ 3559(a)(5), 3583(b)(3) and
3 United States Sentencing Commission Guidelines ("U.S.S.G.") (§§ 5D1.1,
4 5D1.2(a)(3))); and a fine equal to the largest of:

5 (a) \$350,000 (15 U.S.C. § 1);

6 (b) Twice the gross pecuniary gain the conspirators derived from the
7 crime; or

8 (c) Twice the gross pecuniary loss caused to the victims of the crime
9 (18 U.S.C. § 3571(d)).

10 6. In addition, the defendant understands that:

11 (a) Under U.S.S.G. § 5E1.1(a)(2), the Court may order him to pay
12 restitution to the victims of the offense; and

13 (b) Under 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court
14 is required to order the defendant to pay a \$100 special assessment upon
15 conviction for the charged crime.

16 SENTENCING GUIDELINES

17 7. Sentencing for the offense to be charged will be based on the U.S.S.G.
18 Manual in effect on the day of sentencing. The United States and the defendant
19 agree on the determination of the U.S.S.G. offense level in this case, as set out
20 below, based on currently available information. The defendant understands that,
21 should the United States become aware of information that renders incorrect the
22 calculation of the defendant's total offense level, criminal history category, or
23 applicable adjustments or enhancements set out below, the United States will
24 notify the Court before sentencing. Under U.S.S.G. § 1B1.8, self-incriminating
25 information provided to the United States under this Plea Agreement and
26 discussions leading to this Plea Agreement will not be used to increase the volume

1 of affected commerce applicable to the defendant or in determining the Guidelines
2 range.

- | | | | |
|----|-----|--|----|
| 3 | (a) | Base Offense Level (§ 2R1.1(a)) | 10 |
| 4 | (b) | Volume of Affected Commerce (§ 2R1.1(b)(2)(D))
(More than \$6.25 million) | +4 |
| 5 | (c) | Total Adjusted Offense Level | 14 |
| 6 | (d) | Victim-Related Adjustments (§ 3A) | +0 |
| 7 | (e) | Role in the Offense Adjustments (§ 3B)
(Aggravating Role § 3B1.1(b)) | +3 |
| 8 | (f) | Obstruction Adjustments (§ 3C) | +0 |
| 9 | (g) | Acceptance of Responsibility
(§ 3E1.1(b)(2)) | -3 |
| 10 | (h) | Total Offense Level | 14 |
| 11 | (i) | Criminal History Category (§ 4A1.1) | I |
| 12 | (j) | Therefore, the appropriate range of sentence is 15 to 21 months imprisonment, no term of probation (§ 5B1.1), supervised release of one year (§§ 5D1.1, 5D1.2(a)(3)), restitution (§ 5E1.1), a fine of 1% to 5% of the volume of commerce (§§ 2R1.1(c)(1), 5E1.2(b)), and a special assessment of \$100 (§ 5E1.3). | |

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17 **SENTENCING AGREEMENT**

18 8. Under Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and the
19 defendant agree that the appropriate disposition of this case is, and agree to jointly
20 recommend that the Court impose, a sentence of imprisonment for a period of
21 ninety (90) days, the payment of a criminal fine of \$50,000, and no period of
22 supervised release. The United States will not object to the defendant's request
23 that the Court make a recommendation to the Bureau of Prisons that the Bureau
24 of Prisons designate that the defendant be assigned to a Federal Minimum
25 Security Camp (if possible, at Lompoc, California) to serve his sentence of
26 imprisonment and that the defendant be released following the imposition of

1 sentence to allow him to self-surrender to the assigned correctional facility on a
2 specified date. This paragraph (excluding subparagraphs 8(a) - (c)) constitutes the
3 agreed-upon sentence in this case.

4 (a) The United States and the defendant further agree to jointly
5 recommend that the \$50,000 fine be paid in full before the fifteenth day after
6 the date of judgment. The defendant understands that the Court will order
7 him to pay a \$100 special assessment under 18 U.S.C. § 3013(a)(2)(A) and
8 U.S.S.G. § 5E1.3, in addition to any fine imposed;

9 (b) The United States agrees that at the initial appearance or
10 arraignment it will recommend the release of the defendant on his personal
11 recognizance, under 18 U.S.C. § 3142, without restriction as to travel, pending
12 the sentencing hearing in this case; and

13 (c) In the event that the defendant fails to return to the United
14 States to serve his sentence of imprisonment at a Federal Minimum Security
15 Camp, the defendant agrees not to oppose or contest any request for
16 extradition by the United States to face charges either in the Information
17 referenced in Paragraph 2 of this Plea Agreement or in any related
18 indictment.

19 9. The United States and the defendant agree that the Guidelines
20 sentence range exceeds the agreed-upon sentence. The United States agrees that,
21 based on the defendant's past and ongoing cooperation, which occurred prior to the
22 sentencing hearing in this case, it will file a motion, under U.S.S.G. § 5K1.1, for a
23 downward departure from the Guidelines sentence range and will request that the
24 Court impose the agreed-upon sentence set out in Paragraph 8 because of the
25 substantial assistance the defendant has provided in the government's
26 investigation of violations of federal criminal laws in the MCAA industry. Subject

1 to the ongoing, full, and truthful cooperation of the defendant described in
2 Paragraph 12, the United States will fully advise the Court and the Probation
3 Office of the fact, manner, and extent of the defendant's past and ongoing
4 cooperation with the United States' investigation and prosecutions, all material
5 facts relating to the defendant's involvement in the charged offense, and all other
6 relevant conduct. Under U.S.S.G. § 1B1.8, the United States agrees that self-
7 incriminating information previously unknown to the United States that the
8 defendant provides under this Plea Agreement and in discussions leading to this
9 Plea Agreement will not be used in determining the defendant's applicable
10 Guidelines range.

11 10. The United States and the defendant understand that the Court
12 retains complete discretion to accept or reject the agreed-upon sentence in
13 Paragraph 8.

14 (a) If the Court does not accept the agreed-upon sentence, this
15 entire Plea Agreement, except Paragraph 10(b), below shall be rendered null
16 and void.

17 (b) If the Court does not accept the agreed-upon sentence, the
18 defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(e)(4)).
19 If the defendant does withdraw his guilty plea, this Plea Agreement, the
20 guilty plea, and any statements made in connection with or in furtherance of
21 the plea or this Plea Agreement, or in discussions leading to the plea or this
22 Plea Agreement, shall not be admissible against the defendant in any
23 criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)). In addition, should the
24 Court not accept the Plea Agreement and should the defendant then
25 withdraw his guilty plea, the United States agrees that it will dismiss the
26 Information, without prejudice to the United States' right to indict the

1 defendant on the charge contained in the Information and any other related
2 charges. For a period of ten (10) consecutive days following the withdrawal of
3 the guilty plea, the United States shall take no action, based either upon the
4 offenses subject to this Plea Agreement or any actual or alleged violation of
5 the Plea Agreement, to revoke the defendant's release on his personal
6 recognizance, to subject the defendant to service of process or arrest, or to
7 prevent the defendant from departing the United States.

8 11. In light of civil cases filed that potentially provide for a recovery of a
9 multiple of actual damages, the United States agrees that it will not seek a
10 restitution order for the offense charged in the Information.

11 **DEFENDANT'S COOPERATION**

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

19 (a) Producing in the United States and at other mutually agreed-
20 upon locations all documents, including claimed personal documents, and
21 other materials in his possession, custody, or control requested in writing by
22 the United States;

23 (b) Upon reasonable notice by and at the request of the United
24 States, making himself available for interviews in the United States or at
25 other mutually agreed-upon locations;

26 (c) Responding fully and truthfully to all inquiries of the United

1 States in connection with any Federal Proceeding, without falsely implicating
2 any person or intentionally withholding any information, subject to the
3 penalties of making false statements or declarations (18 U.S.C. § 1001) or
4 obstruction of justice (18 U.S.C. § 1503);

5 (d) Otherwise voluntarily providing the United States with any
6 materials or information not requested in (a) - (c) of this paragraph that he
7 may have that is relevant to any Federal Proceeding; and

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

14 GOVERNMENT'S AGREEMENT

15 13. Upon acceptance of the guilty plea called for by this Plea Agreement
16 and imposition of the agreed-upon sentence, and subject to the cooperation
17 requirements of Paragraph 12, the United States agrees that it will not bring
18 further criminal charges against the defendant for any act or offense committed
19 before the Court's acceptance of this Plea Agreement and undertaken in
20 furtherance of an attempted or completed antitrust conspiracy involving the
21 manufacture or sale of MCAA ("Relevant Offense"). The non-prosecution terms of
22 this paragraph do not apply to any civil liability to the United States, to any
23 violations of the federal tax or securities laws, or to any crime of violence.

24 14. The United States agrees that when the defendant is required to travel
25 to the United States for interviews by the United States, grand jury appearances,
26 or court appearances under this Plea Agreement, the United States will take no

1 action, based upon any offense subject to this Plea Agreement, to subject the
2 defendant to arrest, service of process, or prevention from departing the United
3 States, except where the United States has sought to void the Plea Agreement
4 under Paragraph 18. Counsel for the United States shall provide the defendant a
5 letter to such effect in connection with any such travel required by the United
6 States. This paragraph does not apply to the defendant's commission of perjury (18
7 U.S.C. § 1621), making false statements or declarations (18 U.S.C. § 1001), making
8 false statements or declarations in grand jury or court proceedings (18 U.S.C.
9 § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-
10 402) in connection with any testimony provided under this Plea Agreement in
11 trial, grand jury, or other judicial proceedings in the United States. The United
12 States also agrees that documents provided under Paragraph 12 shall be deemed
13 responsive to outstanding grand jury subpoenas issued to Elf.

14 15. (a) Subject to the full and continuing cooperation of the defendant,
15 as described in Paragraph 12 of this Plea Agreement, and upon the Court's
16 acceptance of the defendant's guilty plea and imposition of sentence in this
17 case, the United States agrees not to seek to remove the defendant from the
18 United States under section 240 of the Immigration and Nationality Act,
19 based upon the defendant's guilty plea and conviction in this case, should the
20 defendant apply for or obtain admission to the United States as a
21 nonimmigrant (hereinafter referred to as the "agreement not to seek to
22 remove the defendant"). The agreement not to seek to remove the defendant
23 is the equivalent of an agreement not to exclude the defendant from
24 admission to the United States as a nonimmigrant or to deport the defendant
25 from the United States. (Immigration and Nationality Act, § 240(e)(2));

26 (b) The Antitrust Division of the United States Department of

1 Justice has consulted with the Immigration and Naturalization Service of the
2 United States Department of Justice ("INS"). The INS, in consultation with
3 the United States Department of State, has agreed to the inclusion in this
4 Plea Agreement of this agreement not to seek to remove the defendant;

5 (c) So that the defendant will be able to obtain any nonimmigrant
6 visa that he may need to travel to the United States, the INS and the Visa
7 Office, United States Department of State, have concurred in the granting of
8 a nonimmigrant waiver of the defendant's inadmissibility. This waiver will
9 remain in effect so long as this agreement not to seek to remove the defendant
10 remains in effect. While the waiver remains in effect, the Department of
11 State will not deny the defendant's application for a nonimmigrant visa on the
12 basis of the defendant's guilty plea and conviction in this case, and the INS
13 will not deny his application for admission as a nonimmigrant on the basis of
14 his guilty plea and conviction in this case;

15 (d) This agreement not to seek to remove the defendant will remain
16 in effect so long as the defendant:

17 (i) acts and has acted consistently with his cooperation
18 obligations under this Plea Agreement;

19 (ii) is not convicted of any felony under the laws of the United
20 States or any state, other than the conviction resulting from the
21 defendant's guilty plea under this Plea Agreement or any conviction
22 under the laws of any state resulting from conduct constituting an
23 offense subject to this Plea Agreement; and

24 (iii) does not engage in any other conduct that would warrant
25 his removal from the United States under the Immigration and
26 Nationality Act.

1 The defendant understands that should the Antitrust Division become aware
2 that the defendant has violated any of these conditions, the Antitrust Division
3 will notify the INS. The INS will then determine, in consultation with the
4 Antitrust Division, whether to rescind this agreement not to seek to remove
5 the defendant;

6 (e) The defendant agrees to notify the Assistant Attorney General of
7 the Antitrust Division should the defendant be convicted of any other felony
8 under the laws of the United States or of any state; and

9 (f) Should the United States rescind this agreement not to seek to
10 remove the defendant because of the defendant's violation of a condition of
11 this plea agreement, the defendant irrevocably waives his right to contest his
12 removal from the United States under the Immigration and Nationality Act
13 on the basis of his guilty plea and conviction in this case, but retains his right
14 to notice of removal proceedings.

15 **REPRESENTATION BY COUNSEL**

16 16. The defendant has been represented by counsel and is fully satisfied
17 that his attorney has provided competent legal representation. The defendant has
18 thoroughly reviewed this Plea Agreement and acknowledges that counsel has
19 advised him of the nature of the charge, any possible defense to the charge, and the
20 nature and range of possible sentences.

21 **VOLUNTARY PLEA**

22 17. The defendant's decision to enter into this Plea Agreement and the
23 defendant's decision to tender a guilty plea are freely and voluntarily made and are
24 not the result of force or threats, assurances, promises, or representations other
25 than the representations in this Plea Agreement. The United States has made no
26 promises or representations to the defendant as to whether the Court will accept or

1 reject this Plea Agreement. In signing this Plea Agreement, the defendant is not
2 under the influence of any drug, medication, liquor, intoxicant or depressant, and is
3 fully capable of understanding the terms and conditions of this Plea Agreement.

4 **VIOLATION OF PLEA AGREEMENT**

5 18. The defendant agrees that, should the United States determine in good
6 faith, during the period any Federal Proceeding is pending, that the defendant has
7 failed to provide full cooperation, as described in Paragraph 12, or otherwise has
8 violated any other provision of this Plea Agreement, the United States may notify
9 counsel for the defendant in writing by personal or overnight delivery or facsimile
10 transmission of its intention to void its obligations under this Plea Agreement
11 (except its obligations under this paragraph), and the defendant shall be subject to
12 prosecution for any federal crime including, but not limited to, perjury (18 U.S.C.
13 § 1621), making a false statement or declaration (18 U.S.C. § 1001), making a false
14 statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623),
15 obstruction of justice (18 U.S.C. § 1503), contempt (18 U.S.C. §§ 401-402), and any
16 Relevant Offense. The defendant agrees that in any such prosecution the United
17 States may use against the defendant information provided by the defendant to the
18 United States, federal grand juries, or courts. The defendant may seek court
19 review of any determination made by the United States under this paragraph.

20 **ENTIRETY OF AGREEMENT**

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

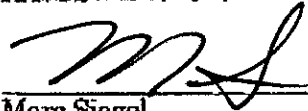
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PLEA AGREEMENT -- JOURDAN -- PAGE 14

1 20. A facsimile signature shall be deemed an original signature for the
2 purpose of executing this Plea Agreement.

3 DATED: *August 6, 2002*

4 Respectfully submitted,

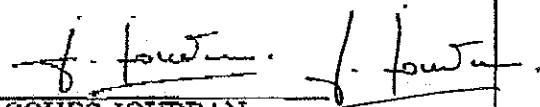
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6 U.S. DEPARTMENT OF JUSTICE
7 ANTTTRUST DIVISION

8 BY: 
9 Marc Siegel
Dana R. Wagner
Attorneys

10 450 Golden Gate Avenue
11 Box 36046, Room 10-0101
12 San Francisco, CA 94102
(415) 436-6660

13 I have consulted with my attorney and fully understand all my rights with
14 respect to the offense charged in the pending Information. Further, I have
15 consulted with my attorney and fully understand my rights with respect to the
16 provisions of the U.S.S.G. I have read this Plea Agreement and carefully reviewed
17 every part of it with my attorney. I understand this Plea Agreement and I
18 voluntarily agree to it.

19 DATED: *August 6, 2002*
August 30, 2002


20 JACQUES JOURDAN
Defendant

21 I am the attorney representing JACQUES JOURDAN. I have fully explained
22 to him his rights with respect to the offense charged in the pending Information.
23 Further, I have reviewed the provisions of the U.S.S.G. that may apply in this case.

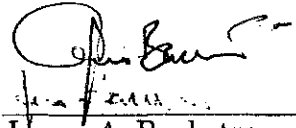
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1 I have carefully reviewed every part of this Plea Agreement with him. To my
 2 knowledge, his decision to enter into this Plea Agreement is an informed and
 3 voluntary one.

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30ACB02

DATED: August 6, 2002



James A. Backstrom, Esq.
 2 Penn Center, Suite 200
 Philadelphia, Pennsylvania 19102-1706
 Attorney for JACQUES JOURDAN