

FILED  
2008 OCT 28 AM 11:24  
DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
DEPUTY  
OCT 28 10 54 AM

) Criminal No. EP-08-CR-2540-FM

) Violation: 15 U.S.C. § 1

) Filed:

Defendant. )

The United States of America and Humberto Lopez, also known as Beto Lopez (“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.”):

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)-(g) above. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Pursuant to Fed. R. Crim. P. 7(b), the defendant will plead guilty to Count One of the Indictment filed in the United States District Court for the Western District of Texas, on September 10, 2008, charging the defendant with participating in a conspiracy to suppress and eliminate competition by rigging bids and allocating customers for certain contracts to supply and install doors and hardware for construction projects in the El Paso, Texas, area, beginning in the early 1990's, and continuing thereafter until at least May 2006, 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 the early 1990's, and continuing thereafter until at least May 2006. During the relevant period, the defendant was an owner and vice president of El Paso Steel Doors and Frames, Inc. (hereinafter, "El Paso Steel Doors"). El Paso Steel Doors was an entity organized and existing under the laws of the State of Texas with its principal place of business in El Paso, Texas. During the relevant period, El Paso Steel Doors was engaged in the business of supplying doors and hardware in the El Paso, Texas, area. During the relevant period, El Paso Steel Doors's sales of doors and hardware to U. S. customers totaled at least \$11 million.

(b) During the relevant period, the defendant entered into and participated in an ongoing conspiracy with other persons and entities engaged in the sale and installation of doors and hardware, the primary purpose of which was to rig bids and allocate customers for certain contracts to supply and install doors and hardware for construction and renovation projects in the El Paso, Texas, area. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of other entities that sell and install doors and hardware. During such meetings and conversations, the co-conspirators reached agreements to rig bids and allocate customers for certain contracts to supply and install doors and hardware for construction projects in the El Paso, Texas, area. The co-conspirators also exchanged information used to prepare

intentionally high and noncompetitive quotes or bids to install doors and hardware on construction and renovation projects. The co-conspirators submitted intentionally high and noncompetitive quotes or bids to install doors and hardware on construction and renovation projects, and supplied doors and hardware at collusive and noncompetitive prices and received payment therefor.

(c) During the relevant period, doors and hardware sold by one or more of the conspirator firms, and equipment and supplies necessary to the distribution and installation of doors and hardware, as well as payments for doors and hardware, traveled in interstate commerce. The business activities of El Paso Steel Doors and co-conspirators in connection with the sale of doors and hardware affected by this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Western District of Texas, El Paso Division. The conspiratorial meetings and conversations described above and attended by the defendant took place in and around El Paso in this District, and doors and hardware affected by this conspiracy were 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 million, (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 imprisoned for up to two (2) years [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). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

### **SENTENCING AGREEMENT**

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), and to assist the Court in determining the appropriate Sentencing Guidelines range, the United States and the defendant agree that defendant's adjusted offense level applicable to the charge described in the Indictment, prior to any departure for substantial assistance, is calculated as follows:

(a) under U.S.S.G. § 2R1.1(a), the defendant's Base Offense Level is 12;

(b) under U.S.S.G. § 2R1.1(b)(1), the conduct involved participation in an agreement to submit noncompetitive bids, resulting in a 1-level

increase;

(c) under U.S.S.G. § 2R1.1(b)(2)(A), the volume of commerce done by his principal in goods or services affected by the violation was calculated at \$2.73 million at the time the defendant elected to cooperate with the investigation, resulting in a 2-level increase;

(d) under U.S.S.G. § 3E1.1(a), the defendant has clearly demonstrated acceptance of responsibility for his offense, resulting in a 2-level decrease, to Offense Level 13; and

(e) under U.S.S.G. § 2R1.1(c)(1), the applicable fine is 1-5 percent of \$2.73 million, or \$27,300-136,500.

9. Offense Level 13, Criminal History Category I, results in a term of imprisonment of 12-18 months. 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.

10. The defendant understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence he will receive, and is free to recommend any specific sentence to the Court. However, the United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of the defendant's activities with respect to this case and all other activities of the defendant which the United States deems relevant to sentencing; and (c) the nature and extent of the defendant's cooperation with the United States.

In so doing, the United States may use any information it deems relevant, including information provided by the defendant both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the criminal violation charged in the Indictment, the participation of the defendant therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of the defendant, and to supply any other information that the Court may require.

11. If the United States determines that the defendant has provided substantial assistance in any investigations or prosecutions, and has otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion, pursuant to U. S. S. G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to the determination and requesting the Court to sentence the defendant in light of the factors set forth in U. S. S. G. § 5K1.1(a)(1)-(5). The defendant acknowledges that the decision whether he has provided substantial assistance in any investigations or prosecutions and has otherwise complied with the terms of this Plea Agreement is within the sole discretion of the United States. It is understood that, should the United States determine that the defendant has not provided substantial assistance in any investigations or prosecutions, or should the United States determine that the defendant has violated any provisions of this Plea Agreement, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not entitle the defendant to



withdraw his guilty plea once it has been entered. The defendant further understands that, whether or not the United States files a motion pursuant to U.S.S.G. § 5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject either party's sentencing recommendation. 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 either party's sentencing recommendation, he nevertheless has no right to withdraw his plea of guilty.

#### DEFENDANT'S COOPERATION

13. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the sale and installation of doors and hardware in the El Paso, Texas, area, and any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

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

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

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

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

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

14. The defendant agrees that a complete and truthful disclosure shall be made to the United States Probation Office regarding every aspect of the defendant's financial condition. Failure to truthfully and completely disclose all financial information as required by the Probation Officer may result in the Court's rejection of the plea of guilty; refusal of the government to recommend to the Court a two-level departure for acceptance of responsibility; a recommendation by the

government for a two-level enhancement in the guideline level for obstruction of justice; and/or prosecution for affirmative false statements or false statements by omission to a member of the judicial branch of the United States government, Title 18 United States code, Section 1001. If the government pursues prosecution, the defendant will not be free to withdraw his plea of guilty entered pursuant to this plea agreement.

15. Further, the defendant acknowledges and agrees that he may not engage in any financial transactions, including, but not limited to, the transfers of funds to and from financial accounts; making or accepting advance payments; buying or selling securities or real or personal property or filing for bankruptcy without the consent of the Court. However, the defendant may engage in routine transactions such as the necessary payment of monthly debt and expenses relating to his employment without the prior consent of the court. Violations of this condition will be considered a breach of the Plea Agreement, which may result in the same consequences as those in the preceding paragraph with the exception of prosecution.

#### GOVERNMENT'S AGREEMENT

16. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement, the United States:

(a) 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 sale and installation of doors and hardware in the El Paso, Texas, area ("Relevant Offense"). The nonprosecution 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; and

(b) will file a motion with the Court to dismiss the charge against El Paso Steel Doors and Frames, Inc. ("the company"), without prejudice to refile it, and, if granted, the United States reserves the right to refile the charge against the company should the defendant fail to provide full, truthful or continuing cooperation. The defendant understands that the Court retains complete discretion to grant or deny the motion to dismiss the charge against El Paso Steel Doors and Frames, Inc.

17. The defendant understands that he may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

### REPRESENTATION BY COUNSEL

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

### VOLUNTARY PLEA

19. 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

20. 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 failed to provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has otherwise 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 will 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.

21. 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.

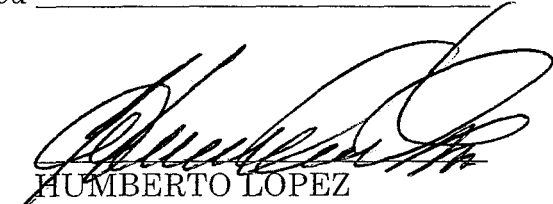
ENTIRETY OF AGREEMENT

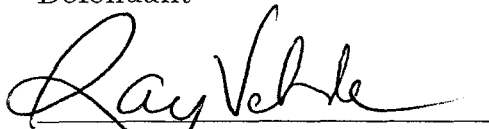
22. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

23. 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.


24. 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: October 28, 2008

  
HUMBERTO LOPEZ  
Defendant

  
RAY VELARDE  
Counsel for Humberto Lopez

  
JANE E. PHILLIPS  
Attorney

  
REBECCA FISHER  
Special Attorney  
Antitrust Division  
U.S. Department of Justice  
Dallas Field Office  
1700 Pacific, Suite 3000  
Dallas, Texas 75201-4506  
Tel.: (214)661-8600