1 2 3 4 5	MICHAEL L. SCOTT (CSBN 165452) JEANE HAMILTON (CSBN 157834) VICTOR ALI (CSBN 229544) Antitrust Division U.S. Department of Justice 450 Golden Gate Avenue Box 36046, Room 10-0101 San Francisco, CA 94102 Telephone: (415) 436-6660
6	Attorneys for the United States
7	UNITED STATES DISTRICT COURT
8	NORTHERN DISTRICT OF CALIFORNIA
9	SAN FRANCISCO VENUE
10	SAIVI KAIVEISCO VEIVOE
11	UNITED STATES OF AMERICA
12	CR 04-0296 MJJ
13	PLEA AGREEMENT
14	JOSEPH B. EISENBERG,
15	Defendant.
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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;
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For the purposes of the Plea Agreement, the "relevant period" is that period beginning in or about July 1995 and continuing until in or about February 2000. During the relevant period, the defendant was an Executive Vice President of Crompton Corporation ("Crompton"), an entity organized and existing under the laws of Massachusetts and then Delaware and with its principal place of business in Middlebury, Connecticut. During the relevant period, Crompton was engaged in the manufacture and sale of rubber chemicals in the United States and elsewhere.

- (b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in the manufacture and sale of rubber chemicals, the primary purpose of which was to maintain and raise the prices of certain rubber chemicals sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant participated in conversations and attended meetings with representatives of other major rubber chemical firms. During such meetings and conversations, defendant and co-conspirators agreed to raise and maintain prices of certain rubber chemicals to be sold in the United States and elsewhere.
- (c) During the relevant period, rubber chemicals sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of rubber chemicals, as well as payments for rubber chemicals, traveled in interstate and foreign commerce. The business activities of Crompton and its coconspirators in connection with the production and sale of rubber chemicals affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.
- Rubber chemicals affected by this conspiracy were sold by one or more of (d) the conspirators to customers located in this District.

POSSIBLE MAXIMUM SENTENCE

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

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 sentencing guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

- 8. The defendant understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge and that, pursuant to Fed. R. Crim. P. 11(c)(3)(B), he will have no right to withdraw his guilty plea if the Court imposes any sentence inconsistent with the recommendation contained in this Plea Agreement or any recommendation made at the time of sentencing.
- 9. Based on the information now known to it, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 3E1.1, for a downward adjustment of three levels for acceptance of responsibility due to the defendant's timely notification of his intention to enter a guilty plea.
- 10. 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) and U.S.S.G. § 5E1.3 in addition to any fine imposed.
- 11. Pursuant to Fed R. Crim. P. 11(c)(1)(B), the United States agrees that if, in its sole and exclusive judgment, it decides that the defendant has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities within the meaning of U.S.S.G. § 5K1.1 in any federal antitrust investigation involving any product sold by Crompton and its predecessors and subsidiaries, and otherwise complied fully with this Agreement, it will file with the Court a motion, pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553. The motion will describe the nature and extent of the defendant's cooperation and recommend a downward departure from the Guidelines' fine and term of imprisonment in this case.
- 12. The defendant understands and agrees that the decision of the United States on whether to file a motion pursuant to U.S.S.G. § 5K1.1, as described in Paragraph 11 above, is based on its sole and exclusive decision of whether the defendant has provided substantial

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

13. Subject to the ongoing, full, and truthful cooperation of the defendant, as

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

DEFENDANT'S COOPERATION

- 14. 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 manufacture or sale of rubber chemicals in the United States and elsewhere, 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 in the United States all 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

- (d) otherwise voluntarily providing the United States with any 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 in the United States, 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).

AGREEMENT BY THE UNITED STATES

15. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 14 of this Plea Agreement, and 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 rubber chemicals ("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.

REPRESENTATION BY COUNSEL

16. 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.

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VOLUNTARY PLEA

17. 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 and the Joseph Eisenberg Cooperation Agreement, filed separately with the Court. 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

- 18. 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 14 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 may seek Court review of any determination made by the United States under this Paragraph to void any of its obligations under the 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.
- 19. 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,

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	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. Crim. P. 11(f) and Fed. R. Evid. 410.
	ENTIRETY OF AGREEMENT
	20. This Plea Agreement and the Joseph Eisenberg Cooperation Agreement constitute
	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.
	21. 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.
	22. 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:9/9/04 Respectfully submitted,
	BY: /s/ BY: /s/ Michael L. Scott Defendant Jeane Hamilton
	Victor Ali Attorneys U.S. Department of Justice Antitrust Division 450 Golden Gate Avenue 10 th Floor Kronish Lieb Weiner & Hellman LLP 1114 Avenue of the Americas New York, NY 10036-7798 Tel: (212) 479-6290 Victor Ali Attorneys U.S. Department of Justice Antitrust Division 450 Golden Gate Avenue 10 th Floor San Francisco, CA 94102 Tel: (415) 436-6660