

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA	)	
	)	Criminal No. 399-CR-067-P
v.	)	
	)	Filed: 03/02/1999
ANTONIO FELIX,	)	
	)	Violation: 15 U.S.C. § 1
Defendant.	)	
	)	Judge: Buchmeyer

**PLEA AGREEMENT**

The United States of America and Antonio Felix, the defendant, hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

**RIGHTS OF DEFENDANT**

1. The defendant understands his right:
  - (a) to be represented by an attorney;
  - (b) to be charged by Indictment;
  - (c) to plead not guilty to any criminal charge brought against him;
  - (d) 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 him guilty beyond a reasonable doubt;
  - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
  - (f) to not be compelled to incriminate himself;
  - (g) to appeal his conviction if he is found guilty at trial; and
  - (h) to appeal the imposition of sentence against him.

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

2. The defendant waives the rights set out in Paragraph 1(b)-(g) above. The defendant also waives the right to appeal the imposition of sentence against him, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. Pursuant to Rule 7(b), Fed. R. Crim. P., the defendant will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(e)(1)(C) to a one-count Information, to be filed in the United States District Court for the Northern District of Texas. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by fixing the price and allocating customers for, and the volume of choline chloride sold in the United States and elsewhere, beginning at least as early as January 1988 and continuing until at least September 29, 1998, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. Pursuant to the terms of this Plea Agreement, the defendant will plead guilty at arraignment to the criminal charge described in Paragraph 2 above, and will make a factual admission of guilt to the Court in accordance with Rule 11, Fed. R. Crim. P., 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 to prove the following facts.

(a) The defendant joined an ongoing conspiracy in August, 1995 and continued his participation until at least September 29, 1998. During this period, the defendant was employed as the Vice President, Basic Products and International Division For DuCoa, L.P., a United States joint venture between

DuPont De Nemours and Company (DuPont), a United States corporation with its principal place of business in Wilmington, Delaware, and ConAgra, Inc., a United States corporation with its principal place of business in Omaha, Nebraska. DuCoa, L.P.'s principal place of business is in Highland, Illinois. During this period, DuCoa, L.P. manufactured and sold choline chloride. Choline chloride is a vitamin of the B-complex group (Vitamin B4). Choline chloride is used to enrich animal feed products in the United States and elsewhere. During this period, DuCoa, L.P. was engaged in the sale of choline chloride in the United States and elsewhere.

(b) During this period, the defendant participated in a conspiracy with representatives from other vitamin manufacturers, the primary purpose of which was to fix the price, allocate customers, and allocate the volume of choline chloride sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of other vitamin manufacturers. During such meetings and conversations, agreements were reached as to the volumes of choline chloride the conspirators would sell and the prices at which they would sell choline chloride in the United States and elsewhere. Further, agreements were reached resulting in the submission of rigged bids for the award and performance of contracts to supply choline chloride to customers located throughout the United States.

(c) During this period, choline chloride sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and

distribution thereof, as well as payments therefor, traveled in interstate and foreign commerce. The business activities of DuCoa, L.P. and co-conspirators, in connection with the production and sale of choline chloride affected by this conspiracy, were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Substantial quantities of choline chloride affected by this conspiracy were sold by conspiracy participants to customers in the Northern District of Texas.

#### **POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of the Sherman Antitrust Act (15 U.S.C. § 1; 18 U.S.C. § 3571(a), (b)) is:

(a) a term of imprisonment for three (3) years;

(b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the gross pecuniary gain derived from the crime, or (3) twice the pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571(d)); and

(c) a mandatory term of supervised release of not less than two (2) years and not more than three (3) years following any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3583(b)).

6. In addition, the defendant understands that:

(a) pursuant to United States Sentencing Guidelines (U.S.S.G.) § 5E1.1.(a)(2), 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) and U.S.S.G. § 5E1.3., the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

### **SENTENCING GUIDELINES**

7. Sentencing for the offense to be charged will be conducted pursuant to the United States Sentencing Guidelines Manual in effect on the day of sentencing.

### **SENTENCING AGREEMENT**

8. Pursuant to Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and the defendant agree that the appropriate disposition of this case is, and agree jointly to recommend that the Court impose, a sentence within the Guidelines range for offense level eight (8) and the payment of a criminal fine of \$20,000. The defendant understands that the United States is free to, and will, recommend that the Court sentence the defendant to a term of imprisonment within the U.S.S.G. offense level 8 range. The defendant is free to argue for a more lenient authorized punishment.

9. The United States and the defendant understand that the imposition of a sentence within the Guidelines range for offense level 8 under this Plea Agreement will require the Court to depart from the United States Sentencing Guidelines. Subject to the full and continuing cooperation of the defendant described in Paragraph 11 of this Plea Agreement, and prior to sentencing in the case, the United States will file a motion to depart downward from the Guidelines, pursuant to U.S.S.G. § 5K1.1. because of the defendant's prior and promised substantial assistance in the investigation and prosecution of other individuals and corporations for violations of the federal criminal laws in the vitamin industry. The United States will fully advise the Court of the fact, manner, and extent of the defendant's ongoing cooperation and his commitment to

prospective cooperation with the United States' investigation and prosecutions, all facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. The decision to file a motion pursuant to U.S.S.G. § 5K1.1. lies within the sole discretion of the United States.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the agreed-upon recommendations provided for in this Plea Agreement. If the Court does not accept the recommended sentence, this Plea Agreement will be void and the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(e)(4)). If the defendant does withdraw his plea of guilty, this Plea Agreement, the guilty plea, and any statements made in connection with or in furtherance of the plea or this Plea Agreement, or in the course of discussions leading to the plea or the Plea Agreement, shall not be admissible against the defendant in any criminal or civil proceeding (Fed. R. Crim. P. 11(c)(6)). The defendant understands that the joint recommendations set out in Paragraph 8 are not binding on the Court. No one has promised or guaranteed to the defendant what sentence the court will impose.

#### **DEFENDANT'S COOPERATION**

11. The defendant will fully and truthfully cooperate with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of the federal antitrust and related criminal laws in the vitamin industry, any other federal investigation resulting therefrom, and any litigation or other proceeding arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). Such cooperation shall include, but not be limited to:

- (a) the production to the United States of all documents and other materials relevant to any Federal Proceeding in the possession, custody, or

control of the defendant requested by the United States in connection with any Federal Proceeding;

(b) upon reasonable notice by the United States, making himself available for interviews with attorneys and agents of the United States in connection with any Federal Proceeding;

(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;

(d) otherwise voluntarily providing the United States with any materials or information, not requested in (a) - (c) of this Paragraph, that he may have related to any such Federal Proceeding: and

(e) when called upon to do so by the United States, testifying in trial and grand jury or other 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), in connection with any such Federal Proceeding.

12. To enable the Court to have the benefit of all relevant sentencing information, the United States will request, and the defendant will not oppose, that sentencing be postponed until the defendant's cooperation is complete.

#### **GOVERNMENT'S AGREEMENT**

13. Subject to the defendant's full and continuing cooperation, as described in Paragraph 11 above:

(a) The United States agrees not to bring further criminal charges

against the defendant for any violations committed before the date of this agreement relating to or arising out of his participation in any combination or conspiracy to fix prices, rig bids, allocate volumes, allocate customers or otherwise restrain trade in the sale of choline chloride. This agreement does not apply to any violations of federal tax and securities laws or civil matters of any kind;

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

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

(d) So that the defendant will be able to obtain any nonimmigrant visa

that he may need to travel to the United States, the INS and the Visa Office, United States Department of State, have concurred in the granting of a nonimmigrant waiver of the defendant's inadmissibility. This waiver will remain in effect so long as this agreement not to seek to remove the defendant remains in effect. While the waiver remains in effect, the Department of State will not deny the defendant's application for a nonimmigrant visa on the basis of the defendant's guilty plea and conviction in this case, and the INS will not deny his application for admission as a nonimmigrant on the basis of his guilty plea and conviction in this case;

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

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

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

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

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

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

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

#### **REPRESENTATION BY COUNSEL**

14. The defendant has been represented by counsel and is fully satisfied that his attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised him of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

#### **VOLUNTARY PLEA**

15. The defendant's decision to enter into this Plea Agreement and his decision to tender a plea of guilty are freely and voluntarily made and are not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. There have been no promises or representations to the defendant as to whether the Court will accept or reject this Plea Agreement.

#### **VIOLATION OF PLEA AGREEMENT**

16. The defendant agrees that should he fail to provide full and truthful

cooperation and substantial assistance or otherwise violate any other provision, the United States, in its sole discretion, may void any of its obligations under this Agreement and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from this investigation. This prosecution may be based upon information provided by the defendant during the course of his cooperation, and this information and any leads derived from this information may be used as evidence against him. Should this Agreement become void, the defendant agrees that he will waive any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act from the date of the execution of this Plea Agreement.

#### **ENTIRETY OF AGREEMENT**

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

DATED:

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
GREGORY S. GLOFF  
MITCHELL R. CHITWOOD

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\_\_\_\_\_/s/\_\_\_\_\_  
ANTONIO FELIX (DATE)

\_\_\_\_\_/s/\_\_\_\_\_  
THEODORE J. MACDONALD, JR., ESQ. (DATE)