

FILED

JUL 02 2012

Clerk, U.S. District and
Bankruptcy Courts

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
 v.)
)
 KYOUNGWON PYO,)
)
 Defendant.)
 _____)

Criminal No. 12:cr-00118-RLW
Filed
Violations: 18 U.S.C. § 1512(c)(1)
(Counts 1-2)

PLEA AGREEMENT

The United States of America and KYOUNGWON PYO (“the defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) 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 be charged by Indictment;
 - (c) as a citizen and resident of the Republic of Korea, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this case against him in the United States District Court for the District of Columbia;
 - (d) to plead not guilty to any criminal charge brought against him;
 - (e) to have a trial by jury, at which he would be presumed not guilty of the charges and the United States would have to prove every essential element of the charged offenses beyond a reasonable doubt for him to be found guilty;

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

(g) not to be compelled to incriminate himself;

(h) to appeal his convictions, if he is found guilty; and

(i) 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)-(h) 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)-(c). 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 agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. The defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are excludable or removable offenses, including the offense to which the defendant is pleading guilty. Exclusion, removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his convictions on his

immigration status. The defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his pleas may entail, even if the consequence is his automatic exclusion or removal from the United States. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a two-count Information to be filed in the United States District Court for the District of Columbia. The Information will charge the defendant with two counts of corruptly altering, destroying, mutilating, or concealing a record, document and other object, or attempting to do so, with the intent to impair the object's integrity and availability for use in an official proceeding, in violation of 18 U.S.C. § 1512(c)(1).

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges 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 OFFENSES 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 from in or about February 2008 through in or about February 2009. During the relevant period, the defendant was Senior Vice President for Corporate Strategy of Hyosung Corporation ("Hyosung"), an entity organized and existing under the laws of the Republic of Korea and with its principal place of business in Seoul, Korea. During the relevant period, Nautilus Hyosung Corporation ("NHI"), a corporate affiliate of Hyosung, was a producer of Automated Teller Machines ("ATMs") and, directly or

through its subsidiaries, was engaged in the sale of ATMs in the United States and elsewhere.

(b) During the relevant period, the defendant was assigned managerial duties in connection with the proposed acquisition by Nautilus of Triton Systems of Delaware, Inc. (“Triton”), an entity organized and existing under the laws of the State of Delaware. The defendant participated in and directed the identification, review, and collection of documents and information that the defendant understood was required to be submitted in premerger notification filings with the United States Federal Trade Commission (“FTC”) and the United States Department of Justice (“DOJ”) in the District of Columbia pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18(a), and implementing regulations promulgated thereunder at 16 C.F.R. Part 801, *et seq.* (“HSR filings”). These documents included “studies, surveys, and analyses and reports . . . evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets.” 16 C.F.R., Part 803 Appendix, at Item 4(c) (the “4(c) documents”).

(c) The defendant made, and directed that other persons employed by Hyosung and NHI make, material alterations to the 4(c) documents, with the intent to impair the documents’ integrity and availability for use in an official proceeding, to wit, to misrepresent and minimize the competitive impact of the proposed acquisition on markets in the United States, and to falsify other statements relevant and material to analyses of the proposed acquisition of Triton by the FTC and DOJ.

(d) As a result, HSR filings incorporating the materially altered 4(c) documents were made to the FTC and DOJ in the District of Columbia on behalf of NHI

on or about August 7, 2008, and August 29, 2008. The HSR filings and subsequent FTC and DOJ review and analysis of the proposed acquisition constituted an official proceeding under 18 U.S.C. §§ 1512(c)(1), 1515(a)(1)(C).

(e) The defendant also made, and directed that other persons employed by Hyosung and NHI make, material alterations to NHI's pre-existing business and strategic plans for the years 2006, 2007, and 2008, that the defendant understood DOJ, in furtherance of its analysis of the proposed acquisition of Triton, had requested in a letter dated August 19, 2008. The material alterations were made with the intent to impair the documents' integrity and availability for use in an official proceeding, to wit, to misrepresent statements concerning NHI's business and competition among vendors of ATMs that were relevant and material to DOJ's analysis of the proposed acquisition of Triton.

(f) The materially altered business and strategic plans were produced to the DOJ in the District of Columbia on behalf of NHI on or about September 4, 2008. The defendant understood that the August 19, 2008 letter request was made pursuant to an official proceeding under 18 U.S.C. §§ 1512(c)(1), 1515(a)(1)(C).

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for each violation of 18 U.S.C. § 1512(c)(1) is:

- (a) a term of imprisonment for twenty (20) years (18 U.S.C. § 1512(b));
- (b) a fine in an amount equal to \$250,000 (18 U.S.C. § 3571(b)); 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 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 for each count of conviction.

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)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$3,000.00, payable in full before the fifteenth (15th) day after the date of judgment, and a period of imprisonment of five (5) months (“the recommended sentence”). The defendant agrees that he will not request that he be allowed to serve any part of his sentence in home detention, intermittent confinement, or community confinement. The United States will not object to the

defendant's request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum Security Camp to serve his sentence. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable. 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. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 11 of this Plea Agreement, and prior to sentencing in this case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offenses, and all other relevant conduct.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 10(b) below, shall be rendered void. Neither party may withdraw from this Plea Agreement, however, based on the type or location of the prison facility to which the defendant is assigned to serve his sentence.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty pleas (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws his pleas of guilty, this Plea Agreement, the guilty pleas, and

any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty pleas or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if he withdraws his guilty pleas pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 12 below, shall be tolled for the period between the date of the signing of this Plea Agreement and the date the defendant withdrew his guilty pleas or for a period of sixty (60) days after the date of the signing of this Plea Agreement, whichever period is greater. For a period of three (3) consecutive days following such a withdrawal of the guilty pleas under this subparagraph, the United States Department of Justice, Antitrust Division, shall take no action, based upon either a Relevant Offense or any actual or alleged violation of this Plea Agreement, to revoke the defendant's release on his personal recognizance, to subject the defendant to service of process, arrest, or detention, or to prevent the defendant from departing the United States.

DEFENDANT'S COOPERATION

11. 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 criminal laws relating to the obstruction or attempted obstruction of the investigation of the proposed acquisition of Triton, 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 full, truthful, and continuing cooperation of the defendant shall include, but not be limited to:

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

(b) making himself available for interviews in the United States and at other mutually agreed-upon locations, 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 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, *et seq.*).

GOVERNMENT'S AGREEMENT

12. Subject to the full, truthful, and continuing cooperation of the

defendant, as defined in Paragraph 11 of this Plea Agreement, and upon the Court's acceptance of the guilty pleas called for by this Plea Agreement and the imposition of the recommended 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 the obstruction or attempted obstruction of the investigation of the proposed acquisition of Triton ("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.

13. The United States Department of Justice, Antitrust Division agrees that when the defendant travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefore, the Antitrust Division will take no action, based upon any Relevant Offense, to subject the defendant to arrest, detention, or service of process. This paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401 - 402) in connection with any testimony or information provided or requested in any Federal Proceeding.

14. The defendant understands that he may be subject to administrative action (including exclusion or removal from the United States) by the United States Department of Homeland Security ("DHS"), based upon the convictions resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, DHS may take. However, the United States Department of Justice, Antitrust Division, agrees that, if

administrative proceedings are instituted by DHS involving the defendant, if requested, it will advise DHS of the fact, manner, and extent of the defendant's cooperation with the United States.

15. 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 convictions 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 Department of Justice, Antitrust Division, 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

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.

VOLUNTARY PLEA

17. The defendant's decision to enter into this Plea Agreement and to tender pleas 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

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, truthful, and continuing cooperation, as defined in Paragraph 11 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 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.

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 this 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.

20. The defendant agrees to and adopts as his own the factual statement contained in Paragraph 4 above. In the event that the defendant breaches this Plea Agreement, the defendant agrees that this Plea Agreement, including the factual statement contained in Paragraph 4 above, provides a sufficient basis for any possible future extradition request that may be made for his return to the United States to face charges either in the Information referenced in Paragraph 2 of this Plea Agreement or in any related indictment. The defendant further agrees not to oppose or contest any request for extradition by the United States to face charges either in the Information referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

ENTIRETY OF AGREEMENT

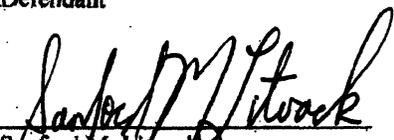
21. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

22. 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.

23. A facsimile or PDF 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: May 3, 2012

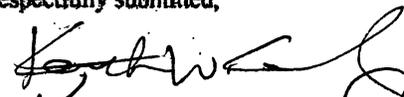

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