

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 03-CR-1427 (LTS)

v. : Filed: 12/3/03

BRUCE BOTCHMAN and WHITE : Violation:
PLAINS COAT & APRON CO., INC. : 15 U.S.C. § 1

Defendants. :
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PLEA AGREEMENT

The United States of America and the defendants Bruce Botchman and White Plains Coat & Apron Co., Inc. (“Defendants”), hereby enter into the following Plea Agreement (“Agreement”) pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure.

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

1. Bruce Botchman (“Botchman”) and White Plains Coat & Apron Co., Inc. (“White Plains”) will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and will each plead guilty in the United States District Court in the Southern District of New York to a one-count Information, in the form attached, in which each is charged with violating 15 U.S.C. § 1 by participating in a combination and conspiracy to allocate customers in the linen supply market in New York City; Westchester County, New York; portions of northern New Jersey; and portions of

Fairfield County, Connecticut (“New York metropolitan area”) beginning in or around the mid 1990s until at least September 2002.

DEFENDANTS’ COOPERATION

2. The Defendants 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 linen supply market in the New York metropolitan area, 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 (collectively referred to herein as “Federal Proceeding”). The ongoing, full, and truthful cooperation of the Defendants shall include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, including claimed personal documents, in the possession, custody, or control of the Defendants, requested by the United States in connection with any Federal Proceeding;

(b) Botchman making himself available for interviews, not at the expense of the United States, at the New York Office of the Antitrust Division, or at other mutually-agreed upon locations, upon the request of attorneys and agents of the United States;

(c) Botchman 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);

(d) upon request of the United States, voluntarily providing the United States with any materials or information, not requested in (a)-(c) of this paragraph, that may relate to any such Federal Proceeding;

(e) Botchman, 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), obstruction of justice (18 U.S.C. § 1503) and contempt (18 U.S.C. §§ 401-402); and

(f) using their best efforts to secure the ongoing, full and truthful cooperation of all current employees of White Plains, as well as former consultant Jay Botchman and former employee Louis Rosen, as may be requested by the United States, including making these persons available, at the defendants' expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

3. The ongoing, full and truthful cooperation of each person described in subparagraph 2(f) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews upon the request 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 for making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) upon request of the United States, voluntarily providing the United States with any materials or information not requested in (a)-(c) of this paragraph that may relate to any such Federal Proceeding;

(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), obstruction of justice (18 U.S.C. § 1503) and contempt (18 U.S.C. §§ 401-402); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 8, the statute of limitations period for crimes arising out of participation in a combination and conspiracy to allocate customers in the linen supply market in the New York metropolitan area from sometime in the mid 1990s until approximately September 2002, will be tolled as to him or her for the period between the date of the signing of this Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the

Agreement.

4. Defendants agree that any assistance Botchman or White Plains may provide to federal criminal investigators in connection with any Federal Proceeding shall be pursuant to the specific instructions and control of the Antitrust Division and those federal criminal investigators.

5. Defendants understand that no provision of this Agreement precludes in any way the possible prosecution of them for perjury (18 U.S.C. § 1621), false statements or false declarations relating to any testimony or information provided by them pursuant to this Agreement (18 U.S.C. § 1623), or obstruction of justice (18 U.S.C. § 1503) in connection with any Federal Proceeding.

GOVERNMENT'S AGREEMENT

6. If Botchman and White Plains fully comply with the understandings specified in this Agreement, the United States agrees not to bring further criminal charges against them or, subject to the provisions of Paragraph 3 herein, against any current employee of White Plains, or former consultant Jay Botchman and former employee Louis Rosen, under 15 U.S.C. § 1, 18 U.S.C. §§ 371, 1341, 1343 (insofar as those statutes relate to mail or wire fraud or to a conspiracy to commit mail or wire fraud), for crimes committed prior to the date of this Agreement and while any such person was acting as an officer, employee or consultant of White Plains, arising out of their participation in a combination and conspiracy to allocate customers in the linen supply market in the New York metropolitan area from sometime in the mid 1990s until approximately September 2002.

The scope of the protection afforded in this paragraph is limited to the activities that the Defendants have disclosed to the United States, as of the date of this Agreement, concerning and relating to their participation in a combination and conspiracy to allocate customers in the linen supply market in the New York metropolitan area from sometime in the mid 1990s until approximately September 2002. This paragraph does not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

7. Except as provided in Paragraph 8, information provided by Botchman or a person described in subparagraph 2(f) to the United States under the terms of this Agreement, pertaining to criminal activity arising out of their participation in a combination and conspiracy to allocate customers in the linen supply market in the New York metropolitan area from sometime in the mid 1990s until approximately September 2002, or any information directly or indirectly derived from that information, may not be used in a criminal case against Botchman or that person, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503). If any person requested to provide cooperation under subparagraph 2(f), fails to comply with his or her obligations under Paragraph 3, then the terms of this Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Agreement, shall be rendered void.

8. If any person who provides information to the United States under this Agreement fails to comply fully with his or her obligations under paragraph 2 of this

Agreement, the United States' agreement in paragraph 7 not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void.

9. It is understood that this Agreement binds only the United States Department of Justice and does not bind any other federal agency or local prosecuting authority or administrative agency. However, if requested, the United States will bring the fact, manner and extent of the cooperation of Botchman and White Plains to the attention of other prosecuting, administrative, and other agencies as a matter for such agencies to consider as appropriate.

POSSIBLE MAXIMUM PENALTIES

10. Botchman understands and agrees that pursuant to 15 U.S.C. § 1 and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for a violation of 15 U.S.C. § 1, a class E felony, is (a) a term of imprisonment of not more than three years; (b) a fine of not more than the greater of \$350,000, or the greater of twice the gross pecuniary gain from the offense or twice the victims' gross pecuniary loss from the offense unless the imposition of a fine under such calculations would unduly complicate or prolong the sentencing process; or (c) both such sentences. Botchman also understands that pursuant to 18 U.S.C. §§ 3563(b)(2) or 3583(d) and U.S.S.G. § 5E1.1, the Court may impose an order of restitution as a condition of probation or supervised release. The Court may also impose a term of supervised release of no more than one year, pursuant to 18 U.S.C. § 3583(b)(3). In addition, Botchman understands that,

pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court must impose a special assessment of \$100.

11. White Plains understands and agrees that pursuant to 15 U.S.C. § 1 and 18 U.S.C. § 3571, the maximum sentence provided by law for a violation by an organization of 15 U.S.C. § 1 is a fine of not more than the greater of (a) \$10 million, or (b) the greater of twice the gross pecuniary gain from the offense or twice the victims' gross pecuniary loss from the offense unless the imposition of a fine under such calculations would unduly complicate or prolong the sentencing process. White Plains understands that pursuant to 18 U.S.C. §§ 3551 and 3561 and U.S.S.G. § 8D1.2, the Court may sentence White Plains to a term of probation of between one and five years. White Plains also understands that pursuant to 18 U.S.C. § 3563(b)(2) and U.S.S.G. § 8B1.1, the Court may impose an order of restitution as a condition of probation. In addition, White Plains understands that, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court must impose a special assessment of \$400.

SENTENCING GUIDELINES

12. Botchman and White Plains understand and agree that sentencing for the crimes charged in the attached Information will be under the United States Sentencing Commission Guidelines Manual (Nov. 2002) (“U.S.S.G.” or “Sentencing Guidelines”).

SENTENCING AGREEMENT

13. Pursuant to Fed.R.Crim.P 11(c)(1)(B) and in an effort to assist the Court in its determination of the appropriate Sentencing Guidelines range, the United States and Botchman agree that Botchman’s combined offense level is 13, prior to any departure for substantial assistance, calculated as follows:

(a) The base offense level applicable to the charges described in Paragraph 1 above is level 10, pursuant to U.S.S.G. 2R1.1(a);

(b) Increase by six levels because the amount of commerce attributable to Botchman was more than \$37,500,000, pursuant to U.S.S.G. 2R1.1(b)(2)(F);

(c) Reduce by two levels because Botchman has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, pursuant to U.S.S.G. 3E1.1(a);

(d) Reduce by one level because the offense level determined prior to the operation of U.S.S.G. 3E1.1(a) is 16 and because Botchman has provided timely assistance, pursuant to U.S.S.G. 3E1.1(b); and

(e) The United States and Botchman stipulate and agree that no other upward or downward adjustments under U.S.S.G. 2R1.1 or Chapter 3 of the Sentencing

Guidelines (“Adjustments”) apply in determining Botchman’s offense level under the Sentencing Guidelines.

14. Botchman and White Plains understand that the sentences to be imposed on them are within the sole discretion of the sentencing judge and that the Court has absolute discretion, pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure to accept or reject the sentencing stipulations and recommendations in this Agreement. The United States cannot and does not make any promises or representations as to what sentences Botchman and White Plains will receive. Botchman and White Plains also understand that should the Court reject the sentencing stipulations and recommendations in this Agreement, that pursuant to Rule 11(c)(3)(B) of the Federal Rules of Criminal Procedure they may not withdraw their guilty pleas. However, the United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of Botchman’s and White Plains’ activities with respect to this case and all other activities of Botchman and White Plains which the United States deems relevant to sentencing; and (c) the timeliness, nature, extent and significance of Botchman’s and White Plains’ cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by Botchman and White Plains 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 offense charged in the attached Information, the participation of Botchman and White Plains 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 Botchman or White Plains, and to supply any other information that the Court may require.

15. If the United States determines that Botchman has provided substantial assistance in any Federal Proceeding, and has otherwise fully complied with all of the terms of this Agreement, it will file a motion, pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence Botchman in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5). Such a motion will permit the Court, in its discretion, to impose a sentence below the applicable Sentencing Guidelines range. The United States and Botchman are free to recommend or argue for any specific sentence to the Court.

16. Botchman acknowledges that the decision whether he has provided substantial assistance in any Federal Proceeding is within the sole discretion of the United States. It is understood that should the United States determine that Botchman has not provided substantial assistance in any Federal Proceeding, 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 Botchman to withdraw his guilty plea once it has been entered. Botchman 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.

17. The United States and White Plains agree that the appropriate disposition of

the case is, and agree jointly to recommend that the Court impose a sentence requiring White Plains to pay a fine to the United States in the amount of \$3.5 million.

(a) The \$3.5 million shall be payable as follows:

(1) the first payment in the amount of \$250,000 will be due within 10 days from the date of imposition of sentence;

(2) \$250,000 will be due at the one-year anniversary of the date of imposition of sentence; and

(3) thereafter, for the next four years, the defendant shall make eight semi-annual payments of \$375,000, on the six-month and yearly anniversary of the date of imposition of sentence.

(b) Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest shall be waived due to White Plains' inability to pay.

18. The United States and the Defendants agree that the Sentencing Guidelines fine range exceeds the agreed-upon recommended fine. The United States agrees that, based on White Plains' ongoing cooperation, the United States would have moved the Court for a downward departure pursuant to U.S.S.G. § 8C4.1, but for the fact that the amount of the fine that the United States would have recommended as a downward departure for substantial assistance provided, still would have exceeded White Plains' ability to pay. The United States and White Plains further agree that the agreed-upon recommended fine, and the terms of this payment, are appropriate pursuant to U.S.S.G. § 8C3.3(b) due to the inability of White Plains to pay a fine greater than that recommended,

and in the manner provided, without jeopardizing its continued viability.

19. In light of the availability of civil causes of action and the fact that any calculation of restitution would involve determining complex issues of fact that would unduly complicate or prolong the sentencing process, the United States agrees that it will not seek a restitution order against Botchman or White Plains for the offense described in Paragraph 1 of this Agreement and charged in the Information attached hereto.

REPRESENTATION BY COUNSEL

20. The Defendants have been represented by counsel and are fully satisfied that its attorneys have provided competent legal representation. The Defendants have thoroughly reviewed this Agreement and acknowledge that counsel has advised them of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

21. The Defendants' decision to enter into this Agreement and to tender pleas 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 Agreement. The United States has made no promises or representations to the defendants as to whether the Court will accept or reject the recommendations contained within this Agreement.

VIOLATION OF PLEA AGREEMENT

22. Botchman and White Plains understand that should the United States determine in good faith that Botchman or White Plains has given false, misleading, or

incomplete information or testimony, or that Botchman or White Plains has failed in any other way to fulfill any of the obligations set out in this Agreement, the United States shall notify counsel for Botchman and White Plains in writing of the claimed breach and its intention to void any of its obligations under the Agreement (except its obligations under this paragraph), and Botchman and White Plains will be subject to prosecution for any federal criminal violation of which the United States has knowledge, including perjury and obstruction of justice.

23. If Botchman or White Plains violates any provision of this Agreement, they agree that any documents, statements, information, testimony or evidence provided by the Defendants, current employees of White Plains, Jay Botchman, or Louis Rosen, whether before or after the execution of this Agreement, and any leads derived therefrom, shall be admissible in evidence in any and all criminal proceedings hereafter brought against the Defendants, and that neither will assert a claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that such evidence, or any leads therefrom, should be suppressed. In addition, Botchman and White Plains agree, that, should the United States be released from its obligations under this Agreement, and should the United States prosecute either of them criminally, the statute of limitations period shall be tolled as to Botchman and White Plains between the date of the signing of this Agreement and six months after the date that the United States gives notice of its intent to void its obligations hereunder.

ENTIRETY OF AGREEMENT

24. This Agreement constitutes the entire agreement between and among the United States and Botchman and White Plains concerning the disposition of the charge contained in the attached Information. The United States has made no other promises to or agreements with Botchman or White Plains. This Agreement cannot be modified other than in a writing signed by the parties.

25. The undersigned is authorized to enter this Agreement on behalf of White Plains as evidenced by the Resolution of the Board of Directors of White Plains attached to, and incorporated by reference in, this Agreement.

Dated: 12/3/03

/s/ _____
BRUCE BOTCHMAN

/s/ _____
JOHN W. McREYNOLDS

/s/ _____
BRUCE BOTCHMAN
President, White Plains Coat &
Apron Co., Inc.

/s/ _____
KEVIN B. HART

/s/ _____
LEE H. RUBIN, ESQ.
Counsel for Bruce Botchman
and White Plains Coat &
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