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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)
) CR.
 v.)
) RULE 11(e)(1)(C) PLEA AGREEMENT
 PIONEER ALUMINUM, INC.) BETWEEN THE UNITED STATES OF
) AMERICA AND PIONEER ALUMINUM,
 Defendant.) INC.
)
)
 _____)

The United States of America and PIONEER ALUMINUM, INC. ("PIONEER") 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.)

1. The Defendant agrees to plead guilty to a one-count Information, to be filed in the United States District Court for the Central District of California, charging that during the period January 1991 through September 1991, it participated in a conspiracy to fix prices for the sale of small press hard alloy ("SPHA") aluminum extrusions to customers located throughout the United States, in violation of the Sherman Act, 15 U.S.C. § 1.

2. The Defendant understands that the maximum penalty for a corporation convicted under 15 U.S.C. § 1 for a crime that took place after November 16, 1990, is the greater of: a) \$10,000,000, b) twice the pecuniary gain the corporation derived from the crime, or c) twice the pecuniary loss caused to the victims of the crime. 18 U.S.C. § 3571(c)(d).

3. The Defendant understands that a mandatory \$200 special assessment will be imposed. 18 U.S.C. § 3013.

4. The Defendant waives any defenses that it might have to the Information described in paragraph 1 above. The Defendant also waives indictment pursuant to Fed. R. Crim. P. 7(b).

5. The United States and the Defendant agree and stipulate that the sentence to be imposed for this offense is governed by the United States Sentencing Commission, Guidelines Manual (Nov. 1990)("1990 Guidelines"), Section 2R1.1., and that the "volume of commerce" for Guidelines calculation purposes is \$14.5 million.

6. The United States and the Defendant agree that the Defendant is unable to pay a fine within the 1990 Guidelines range and still remain viable as a corporation. The Defendant has a current negative net worth of over \$2 million dollars and large debt obligations. Most of

the defendant's current and future income must be used to pay down these debt obligations.

Thus, the defendant will not be able to pay a fine amount within the range called for by the 1990 Guidelines, even with a reasonable installment schedule, and still remain viable.

7. The United States and the Defendant agree that a departure from the 1990 Sentencing Guidelines due to inability to pay is warranted in this case under § 5K2.0. The Departure is warranted because the 1990 Guidelines do not take into account the fact that corporate defendants may be unable to pay the fine called for by the Guidelines and still remain viable.

The United States Sentencing Commission, Guidelines Manual (Nov. 1994) that is currently in effect takes into account the fact that fines on corporate defendants may jeopardize the continued viability of an organization, and provides for a departure in such circumstances. Under section § 8C3.3. of the current Guidelines, the Court may depart from the Guidelines if the court finds that the organization is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay the minimum fine called for by the Guidelines, provided that the reduction shall be no more than is necessary to avoid substantially jeopardizing the continued viability of the organization. Thus, the fact that the minimum fine called for by the Guidelines would put Defendant into bankruptcy constitutes a mitigating circumstance not taken into account in the 1990 Guidelines and a departure under § 5K2.0 is warranted.

7. The United States and the Defendant agree that the appropriate disposition of this case is the imposition of a fine of \$200,000.

8. The United States and the Defendant agree that the fine imposed on the Defendant will not be offset by any fine imposed on the Defendant's principal owner, John P. Cassel. In a related case John P. Cassel has been charged with the same offense described in paragraph 1.

9. The United States and the Defendant reserve the right to allocute at the time of sentencing to advise the court of the facts, circumstances and significance of the offense pursuant to Fed. R. Crim. P. 32(a)(1). The United States reserves the right to provide the Court and the United States Probation Office statements of facts related to the criminal conduct for which the Defendant was responsible and further reserves the right to correct and comment upon any misstatements of fact made by the Defendant or its attorneys in the course of the presentencing investigation, the sentencing, or other proceeding.

10. The United States will not seek restitution in this case because the victims are not readily identifiable and the appropriate amount of restitution cannot be accurately calculated.

11. If the Court rejects the agreed-upon disposition in paragraphs 7 and 8, this entire agreement shall be null and void, and the Defendant will be free to withdraw its plea of guilty pursuant to Fed. R. Crim. P. 11(e)(4). In accordance with Fed. R. Crim. P. 11(e)(6), evidence of a withdrawn guilty plea or any statements made in the course of any plea proceedings or plea discussions shall not be admissible against the Defendant in any criminal or civil proceedings.

12. The Defendant agrees to use its best efforts to make its past and present employees, officers, and directors available to the United States for interviews, grand jury testimony, and trial testimony upon reasonable request by the United States Department of Justice, Antitrust Division. The Defendant agrees to furnish to the Antitrust Division upon the Antitrust's Division's request all information and documents in the Defendant's possession or

control that are relevant to the Antitrust Division's investigation and possible prosecutions of collusive or noncompetitive conduct in the aluminum extrusion industry.

13. The Defendant and those of its employees, officers and directors who are interviewed or who give testimony must at all times give complete, truthful, and accurate information and testimony. If the Defendant withdraws from this agreement, fails to use its best efforts to make its employees, officers, and directors available for interviews or as witnesses before the grand jury or at trial as reasonably requested, or if the Defendant otherwise violates any provision of this agreement, this agreement shall be null and void and shall not prevent the United States from prosecuting the Defendant or any of its employees, officers, or directors for any crimes. Any such prosecution may be premised upon information provided by the Defendant or its employees, officers, and directors, and such information may be used against the Defendant or any of its employees, officers or directors.

14. Subject to the full and continuing cooperation of the Defendant, the United States agrees that no additional federal criminal charges will be filed against the Defendant, or any past or present officers, directors, or employees (except for John P. Cassel, the Defendant's principal owner, who is being charged with the same conduct as Defendant in a separate Information, and who is entering into a separate plea agreement with the United States) for violations of 15 U.S.C. § 1, 18 U.S.C § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), or 18 U.S.C § 1001 (false statements), or for any violation of any other federal statutes relating to collusive or anticompetitive activities by the Defendant in its pricing and sales of SPHA aluminum extrusions which occurred prior to the execution of this agreement.

15. The Defendant understands that this agreement does not bind state or local prosecuting authorities. The United States agrees that if requested, it will bring the Defendant's cooperation to the attention of the prosecuting authorities.

16. The Defendant understands that this agreement does not prohibit the United States or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving the Defendant.

17. The Defendant understands that it may be subject to administrative action by federal, state, or local agencies other than the Antitrust Division of the Department of Justice, as a result of its guilty plea entered pursuant to this agreement, and that this plea agreement in no way controls whatever action, if any, such agencies take. If requested by the agency, the United States will inform the agency of the facts of, and resulting from, this case that may be relevant to that agency's decision about whether to take action, or what action to take.

18. The Board of Directors of the Defendant has reviewed this agreement, has voluntarily agreed to it, and has adopted a resolution to that effect. A copy of the Board of Directors resolution will be filed with the court at or before sentencing. The Defendant and the United States each represents and warrants that it has the full right, power, and authority to execute and deliver this agreement and that no approval or authorization by any other person or entity is required for the agreement to be binding on each party.

19. This plea agreement constitutes the entire agreement between the United States and the Defendant concerning the disposition of charges in this case. No additional promises, agreements, or conditions have been entered into other than those set forth herein and none will be entered into unless in writing and signed by all the parties.

Dated this _____ day of May, 1995.

FOR THE UNITED STATES

FOR PIONEER ALUMINUM, INC.

Richard B. Cohen
William P. Nicholson
Phillip R. Malone
Trial Attorneys
Antitrust Division
U.S. Department of Justice

BY:

Duly Authorized Representative

C. Forrest Bannan, Esq.
Counsel for Pioneer Aluminum, Inc.