

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

CR 17-50020-01

Plaintiff,

**PLEA AGREEMENT**

vs.

ROBERT LARRY LYTLE  
(a.k.a. Larry Lytle),

Defendant.

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The Defendant, the Defendant's attorney, the United States Attorney for the District of South Dakota, and the Consumer Protection Branch of the United States Department of Justice hereby submit the following Plea Agreement to the United States District Court, which Agreement was reached pursuant to discussions between counsel for the United States and the Defendant's attorney. Any reference to the United States or to the Government in this Agreement shall mean, collectively, the Office of the United States Attorney for the District of South Dakota and the Consumer Protection Branch of the United States Department of Justice.

The Agreement is as follows:

**A. ACKNOWLEDGMENT AND WAIVER OF RIGHTS AND UNDERSTANDING OF MAXIMUM PENALTIES:** The Defendant agrees that

he has been fully advised of his statutory and constitutional rights herein, and that he has been informed of the charges and allegations against him and the penalty therefor, and that he understands same. The Defendant further agrees that he understands that by entering a plea of guilty as set forth hereafter, he will be waiving certain statutory and constitutional rights to which he is otherwise entitled.

**B. PLEA AGREEMENT PROCEDURE:** The United States and the Defendant agree that this Plea Agreement is presented to the Court pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure which authorizes the United States to agree that it will not bring, or will move to dismiss, other charges. The Court may accept this agreement, reject it, or defer a decision until the Court has reviewed the presentence report.

**C. PLEA OF GUILTY TO CHARGES – WAIVER OF INDICTMENT:** The Defendant will waive indictment in this case and plead guilty to a superseding information charging one count of criminal contempt, in violation of 18 U.S.C. § 401(3), and one count of conspiracy to introduce misbranded medical devices into interstate commerce with the intent to defraud and mislead, in violation of 18 U.S.C. § 371 and 21 U.S.C. §§ 331 and 333(a)(2) and a forfeiture allegation pursuant to 21 U.S.C. §§ 334 and 853, and 28 U.S.C. § 2461. The charge of criminal contempt carries no maximum prison sentence or fine, but the statute provides for

the imposition of a term of imprisonment, a fine, or both, and a period of supervised release of five (5) years.

The charge of conspiracy to introduce misbranded medical devices into interstate commerce with the intent to defraud and mislead carries a maximum sentence of five (5) years in prison, a fine of the greater of twice the gross gain or twice the gross loss from the offense, or both, and a period of supervised release of three (3) years. If the Defendant is found by a preponderance of evidence to have violated a condition of supervised release, he may be incarcerated for an additional term of up to two (2) years on any such revocation. There is also a \$200 assessment to the victims' assistance fund. Restitution may also be ordered.

Upon acceptance of the plea by the Court and the imposition of sentence, this section shall be treated as a motion to dismiss the Indictment as it pertains to the Defendant, pursuant to the terms of this plea agreement.

**D. DISMISSAL OF CODEFENDANT:** The United States agrees that, upon acceptance of the plea by the Court, it will move to dismiss the Indictment as it pertains to co-defendant Fredretta Eason.

**E. VIOLATION OF TERMS AND CONDITIONS:** The Defendant acknowledges and understands that if he violates the terms of this plea agreement, engages in any further criminal activity, fails to provide the restitution payment specified in paragraph J below, or fails to appear for sentencing, this plea agreement

shall become voidable at the discretion of the United States and the Defendant will face the following consequences:

(1) All testimony and other information the Defendant has provided at any time to attorneys, employees, or law enforcement officers of the United States, to the Court, or to the federal grand jury may and will be used against him in any prosecution or proceeding.

(2) The United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against the Defendant, and to use any information obtained directly or indirectly from him in those additional prosecutions; and

(3) The United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

**F. ACCEPTANCE OF RESPONSIBILITY:** The United States agrees that based upon the information known to it at this time, the Defendant is entitled to a two-level decrease in his offense level pursuant to U.S.S.G. § 3E1.1(a), provided no evidence is disclosed in the presentence report which indicates the Defendant has not demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, and further provided he: (1) complies with the terms of this plea agreement; (2) testifies truthfully during the change of plea hearing; (3) participates truthfully with the Probation Office in the presentence investigation; (4)

does not violate any conditions of pretrial detention or release after he signs this agreement; and (5) continues to exhibit conduct consistent with acceptance of responsibility.

Both the United States and the Defendant otherwise reserve the right to present evidence and make argument regarding sentencing.

**G. GOVERNMENT'S RECOMMENDATION REGARDING SENTENCE – ANY SENTENCE WITHIN STATUTORY LIMITS:** At the sentencing hearing, both the United States and the Defendant are free to recommend whatever sentence each feels is appropriate, within statutory limits, present evidence, and make arguments in support thereof. The Defendant understands that any recommendation made by him or the United States is not binding on the Court. The Defendant further understands that he may not withdraw his plea of guilty if the Court rejects any recommendation.

**H. ROLE IN THE OFFENSE – ORGANIZER OR LEADER:** The Defendant and the United States agree that based upon the Defendant's role in the offense, he is an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1(a), requiring an increase of his offense level by four levels.

**I. SPECIAL ASSESSMENT:** The Defendant agrees to remit to the U.S. Clerk of Court, 400 S. Phillips Avenue #128, Sioux Falls, SD 57104, no later than

two weeks prior to sentencing, a certified or cashier's check payable to the "U.S. Clerk of Court" in the amount of \$200, in full satisfaction of the statutory costs pursuant to 18 U.S.C. § 3013.

**J. RESTITUTION:** The Defendant hereby agrees pursuant to 18 U.S.C. §§ 3663 and 3663A to make restitution sufficient to repay all consumers who purchased a QLaser. The Defendant and the United States agree that the proceeds derived from QLaser sales total at least \$16,669,015. The United States reserves the right to present evidence and argument regarding restitution.

The Defendant further agrees to make a restitution payment of \$1,000,000 to the Court by February 15, 2018. Defendant agrees that he will make an initial restitution payment of \$675,000 to the Court on or before January 31, 2018. The United States agrees to consider funds forfeited pursuant to paragraph Q of this agreement to be applied to that payment. The Defendant understands that, if the initial payment is not made by January 31, 2018, or if the United States determines Defendant has failed to comply with his obligations under paragraph M of the plea agreement, the United States reserves the right to void all terms of this plea agreement.

If, after conducting the debtor's exam described in paragraph M of this agreement, the United States in its sole discretion determines that Defendant has complied with his obligations under paragraph M of the plea agreement, but that he

is unable to pay more than \$675,000 toward the \$1,000,000 obligation by February 15, 2018, the United States agrees that it will not seek to void the remaining terms of the plea agreement for that reason.

The Defendant further agrees that the amount of restitution is not restricted to the amounts alleged in the counts to which he is pleading guilty and may include losses arising from charges not prosecuted as well as other relevant conduct associated with the Defendant's criminal conduct. The parties specifically agree that the Court has the authority to enter this order of restitution because it has been "agreed to by the parties in a plea agreement," pursuant to 18 U.S.C. § 3663(a)(3).

**K. FINE – GOVERNMENT RECOMMENDATION:** The United States will recommend that the Court impose a fine within the applicable guidelines range, except to the extent that imposition of such fine would impair the ability of the Defendant to make restitution, consistent with 18 U.S.C. § 3572(b).

**L. RELINQUISHING RELEVANT PROPERTY:** The Defendant hereby agrees to relinquish ownership rights to all QLasers products, including but not limited to all devices and promotional materials. He further agrees to assist any government agency in locating and seizing such devices.

**M. MONETARY OBLIGATIONS – DEFENDANT'S ONGOING DUTY:** Defendant agrees to assist the United States in identifying, locating,

returning, and transferring assets for use in payment of any financial obligations imposed as part of the sentence in this case.

Defendant agrees to engage in an effort to account for and provide all financial resources to satisfy the financial obligation at or before sentencing, including fully cooperating with the United States and its designees in answering all requests regarding property, real property, financial, or investment accounts. Defendant agrees to promptly execute and return an Authorization to Release Financial Records and Documents, an Authorization to Release Tax Returns and Attachments, and a Financial Statement.

Defendant agrees to provide the U.S. Attorney's Office with any information or documentation in defendant's possession or control regarding defendant's financial affairs.

Defendant agrees to produce requested financial documents and execute authorizations, as described elsewhere in this paragraph, on or before January 31, 2018. Defendant further agrees to submit to a debtor's examination within 10 days of the execution of this agreement. Such examination will be in the form of a transcribed deposition, taken under oath. If the United States determines that Defendant has failed to comply with his obligations under this paragraph of the plea agreement, Defendant acknowledges and understands that all evidence obtained



through the debtor's exam will be admissible as evidence against him in any resulting prosecution.

Defendant further agrees to provide this information whenever requested until such time any judgment or claim against defendant, including principal and interest, is satisfied in full. Defendant consents that the United States has permission to obtain defendant's credit report prior to entry of judgment. Defendant agrees to promptly provide copies of yearly tax returns when filed with the Internal Revenue Service.

Defendant acknowledges and understands that any pre-sentencing effort to hide or obscure or transfer assets, for the purpose of placing them outside the reach of the United States' efforts to collect restitution, constitutes a breach of this plea agreement.

If Defendant does not have sufficient financial resources to immediately satisfy the financial obligations imposed upon him at sentencing, Defendant understands that this is an ongoing duty which continues until such time as payment is remitted in full.

Defendant also agrees that if he is incarcerated, he will participate in the Bureau of Prison's Inmate Financial Responsibility Program during any period of incarceration in order to pay any financial obligations ordered by the Court. Defendant's agreement to participate in the Inmate Financial Responsibility

Program does not limit the United States' right to pursue collection from other available sources. If there is no period of incarceration ordered, Defendant agrees that payment of any financial obligations ordered by the Court shall be a condition of probation.

**N. RESERVING THE RIGHT TO REBUT OR CLARIFY MITIGATION INFORMATION:** The United States reserves the right to rebut or clarify matters set forth in the presentence investigation report, or raised by the Defendant in mitigation of his sentence, with evidence and argument.

**O. NO FURTHER PROSECUTION:** The United States agrees that there will be no further federal criminal prosecution of the Defendant by the United States Attorney for the District of South Dakota or the Consumer Protection Branch of the United States Department of Justice based on the information and evidence now available to the United States regarding the Defendant's involvement with marketing, sale, and distribution of low-level laser medical devices.

**P. PERMANENT INJUNCTION AND AGREEMENT TO CEASE AND DESIST:** The Defendant agrees and understands that he is a named defendant as defined by the Amended Order of Permanent Injunction entered by the Court in *United States v. 2035 Inc.*, Civ. No. 14-5075 (D.S.D. Oct. 13, 2015), who has received actual notice of that Order and therefore is permanently enjoined as described by the terms of that Order. The Defendant further agrees to permanently

cease and desist from introducing or causing, directly or indirectly, the introduction into interstate commerce of any device that is subject to the provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*

**Q. AGREEMENT TO FORFEIT PROPERTY:** Pursuant to 21 U.S.C. §§ 334 and 853, and 28 U.S.C. § 2461, the Defendant agrees to forfeit to the United States all interest in:

1. One (1) white 2015 Ram 1500 Longhorn pickup truck, Vehicle Identification Number 1C6RR7PMOFS505300;
2. One (1) brown 2014 Ram 3500 ST diesel pickup truck, Vehicle Identification Number 3C63RRGL2EG165789;
3. Two thousand, three hundred twenty-five (2,325) "Battle of the Coral Sea" 1/2-ounce silver bullion coins;
4. Sixty-one (61) "Battle of the Coral Sea" 1/10-ounce gold bullion coins;
5. The contents of a bank account held at BankWest, account number ending in 0419;
6. The contents of a bank account held at BankWest, account number ending in 4711;
7. The contents of a bank account held at BankWest, account number ending in 8635;

8. The contents of a bank account held at First Interstate Bank, account number ending in 0598;
9. The contents of a bank account held at Security First Bank, account number ending in 0130; and
10. The contents of a bank account held at Pioneer Bank and Trust, account number ending in 1877.

(hereinafter referred to as “the property”).

The Defendant warrants that he is the sole owner of all of the property. The Defendant agrees to hold the United States, its agents, and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of the property.

The Defendant further agrees to waive all interest in the property in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The Defendant agrees to consent to the entry of orders of forfeiture for the property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The Defendant acknowledges that he understands that the forfeiture of the property is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

The Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment.

The Defendant agrees to take all steps necessary to pass clear title to the property to the United States, including, but not limited to, surrender of title, the signing of a consent decree, stipulating to facts regarding the transfer and basis for the forfeiture, executing deed or title transfers, and signing any other documents necessary to effectuate such transfers.

The United States Attorney's Office agrees to recommend to the Money Laundering and Asset Recovery Section, United States Department of Justice, that any forfeited property be used to pay the defendant's court-ordered restitution.

**R. BASIS FOR PLEA OF GUILTY:** The Defendant agrees that the Factual Basis Statement, signed by the parties and incorporated herein by this reference, provides the basis for his guilty plea in this case, and is a true and accurate statement of his actions or omissions with regard to the charges to which he is entering a plea, and that the Court may rely thereon in determining the basis for his plea of guilty as provided for in this plea agreement.

**S. WAIVER OF SPEEDY TRIAL:** The Defendant agrees to waive any rights to a speedy trial under either the United States constitution or the Speedy Trial

Act. This waiver is necessary so that the Court will have the benefit of all relevant information at sentencing.

**T. PARTIES BOUND:** It is further understood and agreed that this agreement is limited to the United States Attorney's Office for the District of South Dakota and the Consumer Protection Branch of the United States Department of Justice, and that this agreement cannot and does not bind other federal, state, or local prosecuting authorities.

**U. SCOPE OF AGREEMENT:** This agreement shall include any attachments, exhibits or supplements designated by the parties. It is further understood and agreed that no additional promises, agreements, or conditions have been entered into other than those set forth in this agreement, and this agreement supersedes any earlier or other understanding or agreement.

**V. WAIVER OF DEFENSES AND APPEAL RIGHTS:** The Defendant hereby waives all defenses and his right to appeal any non-jurisdictional issues. The parties agree that excluded from this waiver is the Defendant's right to appeal any decision by the Court to depart upward pursuant to the sentencing guidelines as well as the length of his sentence for a determination of its substantive reasonableness should the Court impose an upward departure or an upward variance pursuant to 18 U.S.C. § 3553(a).


### **SUPPLEMENT TO PLEA AGREEMENT**

The United States will file a Supplement to Plea Agreement which is required to be filed in every case in compliance with the Court's Standing Order.

**FOR THE UNITED STATES OF AMERICA:**


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United States Attorney

1-26-18  
Date

  
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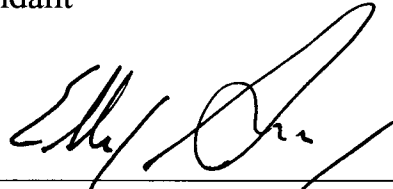


**FOR THE DEFENDANT, ROBERT LARRY LYTLE:**

1-26-18  
Date

  
Robert Larry Lytle  
Defendant

1-26-18  
Date

  
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