UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD D. WEIR, JR.

Defendant.

CR: 17-50022

PLEA AGREEMENT

The Defendant, the Defendant's attorney, the United States Attorney for the District of South Dakota, and the United States Department of Justice, Consumer Protection Branch 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.

A. ACKNOWLEDGEMENT 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 CHARGE — WAIVER OF INDICTMENT

The Defendant will waive indictment in this case and plead guilty to an information charging a single 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, 333(a)(2). The charge 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 the 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 $100 assessment to the victims' assistance fund. Restitution may also be ordered.

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D. 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, 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 proceedings;

(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.

E. TIMELY 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 (2) 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

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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.

The United States further agrees that the Defendant is entitled to an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b).

F. GOVERNMENT'S RECOMMENDATION REGARDING SENTENCE—WITHIN THE GUIDELINE RANGE

The Defendant and the United States understand and agree that the Court will determine the applicable Guideline range after reviewing the presentence report and considering any evidence or arguments submitted at the sentencing hearing. The United States agrees that it will recommend that the Court impose a sentence of imprisonment within the applicable Guideline range. 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.

The United States reserves the right to present evidence and argument as to what it believes the applicable Guideline range should be and to respond to any request for a sentence below the applicable Guideline range. For the purposes of this agreement, the "applicable Guideline range" is the range found by the Court by reference to the Sentencing Table at U.S.S.G. § 5A based on the Defendant's total

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offense level and criminal history before adjustments, if any, are made based on a downward departure, an 18 U.S.C. § 3553(e) sentencing factor, or other variance.

G. STIPULATED OFFENSE LEVEL AND APPLICABLE GUIDELINE SECTION

It is understood and stipulated between the United States and the Defendant that the base offense level upon which the Defendant's sentence is to be initially calculated, pursuant to U.S.S.G §§ 2X1.1, 2N2.1, and 2B1.1, is six (6); it is further stipulated that pursuant to U.S.S.G. § 2B1.1(b)(1)(H), the offense level should be increased by fourteen (14) levels, because the loss that resulted from the offense was greater than $550,000 but less than $1,500,000; it is further stipulated that pursuant to U.S.S.G. § 2B1.1(b)(2)(A) that the offense level should be increased by an additional two (2) levels because the offense involved ten or more victims and was committed through mass-marketing; it is further stipulated that pursuant to U.S.S.G. § 2B1.1(b)(9)(C), the offense level should be increased by an additional two (2) levels because the offense involved a violation of a prior, specific judicial injunction, for a total offense level before adjustments of twenty-four (24).

The Defendant further understands that this stipulation is not binding upon the Court. The Defendant further understands that should the Court not follow the terms of this stipulation and agreement, he will not be allowed to withdraw his plea.

H. VICTIM-RELATED ADJUSTMENT

The Defendant and the United States agree that the Defendant knew or should have known that a large number of victims of the offense and the Defendant's relevant conduct were unusually vulnerable due to age, physical or

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mental condition, or who were otherwise particularly susceptible to the Defendant's conduct, therefore requiring an increase of his offense level by four (4) levels, pursuant to U.S.S.G. § 3A1.1(b).

I. ROLE IN THE OFFENSE — AVERAGE PARTICIPANT

It is stipulated between the United States and the Defendant that the offense level should not be adjusted pursuant to U.S.S.G. §§ 3B1.1 or 3B1.2, in that the Defendant's offense conduct readily provable by the United States does not expose him to an increase in his offense level for performing an aggravating role in the offense, nor does his offense conduct qualify him for a reduction in his offense level for performing a mitigating role in the offense. Neither the United States nor the Defendant will offer proof or argument in support of an adjustment for aggravating or mitigating role in the offense at sentencing. The Defendant understands that this stipulation is not binding upon the Court. The Defendant further understands that should the Court not follow the terms of this stipulation and agreement, he will not be allowed to withdraw his plea.

J. 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 $100, in full satisfaction of the statutory costs pursuant to 18 U.S.C. § 3013.

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K. RESTITUTION — GOVERNMENT RECOMMENDATION

The United States will recommend that pursuant to 18 U.S.C. §§ 3663 and 3663A, the Defendant make restitution of not less than the full amount paid by each consumer who purchased a QLaser device from the Defendant or the Defendant's business entities. The Defendant reserves the right to argue at sentencing that liability for such restitution be apportioned among additional defendants to reflect the level of contribution to the victims' losses and economic circumstances of each defendant pursuant to 18 U.S.C. § 3664(h).

L. 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).

M. MONETARY OBLIGATIONS — DEFENDANT'S ONGOING DUTY

If the Defendant does not have sufficient financial resources to immediately satisfy the financial obligations imposed upon him at sentencing, the Defendant agrees, if requested by the United States, to promptly execute and return an executed Authorization to Release Financial Records and Documents, an executed Authorization to Release Tax Returns and Attachments and an executed Financial Statement. The Defendant understands that this is an ongoing duty which continues until such time as payment is remitted in full. Also, the Defendant may be required

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to furnish the requested information, as well as current earnings statements and copies of his W-2s even if the request is made after he has been sentenced.

The 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.

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

N. 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

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Justice based on the information and evidence now available to the United States regarding the Defendant's involvement with low level laser medical devices.

P. 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.

Q. 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.

R. 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.

S. 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

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forth in this agreement, and this agreement supersedes any earlier or other understanding or agreement.

T. 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.

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FOR THE UNITED STATES OF AMERICA:

RANDOLPH J. SEILER
United States Attorney

Dated this 25th day of January, 2017

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Dated this 26th day of January, 2017

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APPROVED:
RANDOLPH J. SEILER
United States Attorney
By:

Dated this 30th day of January, 2017

GREGG S. PETERMAN
Supervisory Assistant U.S. Attorney

FOR THE DEFENDANT, RONALD D. WEIR, JR.:

Dated this 26 day of January, 2017

RONALD D. WEIR, JR.
Defendant

Dated this 26 day of January, 2017

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