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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CLERK, U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AGA MEDICAL CORPORATION,

Defendant.

Criminal No. CR08-172 JMR

Count One
18 U.S.C. § 371

Count Two
15 U.S.C. §§ 78dd-2(a)(1) and 18
U.S.C. § 2

INFORMATION

1. The United States Department of Justice, Criminal Division, Fraud Section, charges that, at all times material to this Information (unless specified otherwise):

GENERAL ALLEGATIONS

2. The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.*, ("FCPA"), prohibited certain classes of persons and entities from corruptly making payments to foreign government officials to assist in obtaining or retaining business. Specifically, the FCPA prohibited certain corporations from willfully making use of any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.

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RICHARD B. SLETTER, CLERK
JUDGMENT ENTERED _____
DEPUTY CLERK'S INITIALS _____

3. The defendant, AGA MEDICAL CORPORATION ("AGA") was incorporated in 1995 in Minnesota, had its principal place of business in Golden Valley, Minnesota, and was a "domestic concern" as that term is used in the FCPA, 15 U.S.C. § 78dd-2(h)(1)(B).

4. AGA manufactured and sold medical devices for the minimally invasive treatment of congenital heart defects. AGA marketed and sold its products in over 90 countries, including the People's Republic of China ("China"), through a network of local distributors and direct sales. Between 1997 and 2005, AGA sales in China totaled approximately \$13.5 million.

5. AGA maintained email servers at its Golden Valley, Minnesota, headquarters and all email directed to AGA employees was sent to these email servers.

6. From at least March 2000, through in or about late-2002, AGA applied to the State Intellectual Property Office of the People's Republic of China ("the Chinese Patent Office"), an agency of the Chinese government, for patents on several of its products.

7. From in or about 1995 to the present, "Officer A," a U.S. citizen, was a high-ranking officer and part owner of AGA, who had authority to set company policy, contract with distributors, hire and fire employees, set sales prices, and approve sales practices in foreign countries.

8. From in or about 1997, through in or about November 2001, "Employee B," a U.S. citizen, was the head of international sales for AGA.

9. From in or about December 2001, through in or about early 2007, "Employee C," a U.S. citizen, was the head of international sales for AGA.

10. In or about December 1998, AGA entered into an agreement with a Chinese company to be the sole distributor of AGA products in China. An employee of that company, "the

Chinese Distributor," a Chinese citizen, was responsible for the AGA account at that company and was the main point of contact for AGA. In or about 1999, the Chinese Distributor left his employer to form his own company. AGA moved its business from the initial company to the Chinese Distributor's new company and AGA maintained a business relationship with the Chinese Distributor and his company until AGA suspended the shipment of products to the Chinese Distributor in June 2005. On or about April 12, 2006, AGA terminated its agreement with the Chinese Distributor.

11. While under contract with AGA, the Chinese Distributor was authorized to sell AGA products, negotiate prices, and employ salespeople. The Chinese Distributor's primary customers were hospitals owned and operated by the government of China and government-employee physicians working at those hospitals.

12. Government-owned and controlled hospitals in China were "instrumentalities" of the Chinese government and physicians employed by such hospitals were "foreign officials," as those terms are used in the FCPA, 15 U.S.C. § 78dd-2(h)(2)(A).

COUNT ONE
(Conspiracy)

13. Paragraphs 1 through 12 of this Information are realleged and incorporated by reference as if set out in full herein.

14. From in or about 1997, through in or about 2005, in the District of Minnesota, and elsewhere, defendant AGA MEDICAL CORPORATION did unlawfully, willfully, and knowingly conspire and agree with Officer A, Employee B, Employee C, the Chinese Distributor, and others, known and unknown, to commit an offense against the United States, specifically, to

willfully use the means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and the authorization of the payment of money to foreign officials for the purpose of: (i) influencing the acts and decisions of such foreign officials in their official capacities; (ii) inducing such foreign officials to do and omit to do acts in violation of the lawful duties of such officials; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist AGA in obtaining and retaining business, in violation of the FCPA, 15 U.S.C. § 78dd-2(a)(1).

PURPOSE OF THE CONSPIRACY

15. The purpose of the conspiracy was to make payments to Chinese government officials in order to: (i) cause government-owned hospitals and government-employed physicians to purchase AGA products; and (ii) cause the Chinese Patent Office to approve AGA's patent applications.

MANNER AND MEANS OF THE CONSPIRACY

16. To achieve the purpose of the conspiracy, AGA and others used the following manner and means, among others:

a. It was part of the conspiracy that AGA entered into distributorship agreements with the companies employing the Chinese Distributor.

b. It was a further part of the conspiracy that the Chinese Distributor and Officer A agreed that the Chinese Distributor would pay kickbacks to physicians employed by and making purchasing decisions for the government-owned hospitals.

c. It was a further part of the conspiracy that the Chinese Distributor regularly informed Officer A and Employee C of the amount of kickbacks he had paid in connection with the sale of AGA products.

d. It was a further part of the conspiracy that the Chinese Distributor and Officer A agreed to pay an official of the Chinese Patent Office in order to cause that office to approve AGA's patent applications.

OVERT ACTS

17. In furtherance of the conspiracy and to accomplish its unlawful purpose, the following overt acts, among others, were committed in the District of Minnesota, and elsewhere:

a. In or about December 1997, Officer A, on behalf of AGA, signed and executed a distributorship agreement with the company that then employed the Chinese Distributor.

b. On or about December 20, 1997, the Chinese Distributor sent an email from China to Officer A in Minnesota informing Officer A that hospitals in China were asking for a 10% "discount" and physicians were asking for a 10% "commission" on products sold. The Chinese Distributor further informed Officer A that if AGA did not accept those terms, the hospitals and physicians would not purchase AGA's products.

c. In or about January 1998, the Chinese Distributor traveled from China to Minnesota to discuss with Officer A, among other things, the prices that the Chinese Distributor would charge for AGA's products and the kickbacks that the Chinese Distributor would pay to physicians in China in order to induce them to purchase AGA's products.

d. On or about July 16, 1998, Officer A sent an e-mail to the Chinese Distributor stating: "I understand that the fee you must pay each physician was to be included in your

selling price. It should therefore not be an issue.”

e. In or about December 1998, Officer A, on behalf of AGA, signed and executed a second distributorship agreement with the company that then employed the Chinese Distributor.

f. In or about 1999, after the Chinese Distributor left his original employer to start his own company, Officer A, on behalf of AGA, entered into a distributorship agreement with the Chinese Distributor's new company.

g. On or about February 1, 2000, the Chinese Distributor again traveled from China to Minnesota to discuss with Officer A, among other things, the prices that the Chinese Distributor would charge in China for AGA's products and the kickbacks that the Chinese Distributor would pay to physicians in China to induce them to purchase AGA's products.

h. On or about March 19, 2001, the Chinese Distributor sent an email from China to Employee B in Minnesota stating that the Chinese Distributor had, to that point, paid \$460,000 in “commissions” to physicians in China and had also contacted a Chinese patent official to whom he would have to pay money. The Chinese Distributor wrote, “This week I have maken [sic] an appointment with one key person in China knowledge and Patent Protection Bureau. Any action in China I must pay money to do.”

i. On or about May 11, 2001, the Chinese Distributor sent an email from China to Officer A in Minnesota stating that the Chinese Distributor had met with a Chinese patent official regarding AGA's patent application and that the official had agreed to speed up the review of AGA's application and to “solve some problems in different departments in her bureau” related to the application. The Chinese Distributor explained in the email that he would have to “sponsor” the

patent official for this work and asked Officer A if AGA would agree to cover that cost.

j. By return email on or about May 11, 2001, Officer A agreed, on behalf of AGA, to cover the fee to be paid to the Chinese patent official by the Chinese Distributor, stating, "I am still in agreement with our prior discussions and will cover her fee as long as we can get teh [sic] patent issued in a timely manner."

k On or about July 24, 2001, the Chinese Distributor sent an email from China to Officer A in Minnesota stating: "Very good news that your patents have been taken out from the stock and begun to check by the observation people. My friends told me that if there are any news, they will tell me. I think we will win this war if we can get the patent approvenment [sic]. I contacted with two officials working in different departments. They will help us from different ways. They don't know each other and don't know I asked two people to help us . . . About your new product, my friend told me that you should ask your agent to apply the invent and practical patents sametime [sic]. I can ask my friend to help to approve the practical patent in one year and get 10 years protection."

l. On or about February 6, 2002, the Chinese Distributor sent an email from China to Employee C in Minnesota stating: "Please inform [Officer A] don't give up the application for the first three patents in China. I will contact with the officials of China patent bureau again after Chinese new year. Maybe money will help us."

m. On or about March 20, 2002, the Chinese Distributor sent an email from China informing Officer A that the Chinese Distributor had paid \$20,000 to the patent official to approve patents for AGA products and that: "I just need the results of patents approved no matter what way he do."

n. On or about April 17, 2002, the Chinese Distributor sent an email from China to Officer A stating: "Today my friend tells me that one of your last two patents have been approved and the other one will be approved soon."

o. On or about October 18, 2002, the Chinese Distributor sent an email from China to Officer A stating that the Chinese Distributor was currently paying a "reward" to each physician who purchased an AGA product in an amount ranging from \$300 to \$1,000 per product purchased.

p. On or about October 31, 2002, Employee C sent a memo to Officer A listing the then-current prices for various AGA products in China and including a column entitled "Reward to Physicians," with dollar amounts listed for each product. On or about this same date, Employee C hand-wrote a notation reading, "OK, effective immediately," at the top of this memo.

q. On or about October 21, 2003, Employee C wrote a memorandum to Officer A and other AGA employees reporting on his recent trip to China. The memorandum contained a chart of then-current prices being charged for various AGA products in China and contained a notation reflecting the amount of the "rebates" given by the Chinese Distributor to physicians.

r. On or about December 2, 2003, the Chinese Distributor sent an email to Employee C regarding pricing for AGA products in China which stated: "My company also need to provide 20% kickback for physicians and sometimes 10% discount to hospitals."

s. On about December 5, 2003, the Chinese Distributor sent an email from China to Employee C, explaining how physicians at hospitals in China selected products for purchase: "The physicians suggest the patient to use which device according [to] the patient's family economic ability and the kickback."

t. On or about February 26, 2005, the Chinese Distributor sent an email from China to Employee C providing Employee C with a list of then-current prices being charged for various AGA products in China and informing Employee C that the Chinese Distributor was paying physicians kickbacks of 15% to 25% of the purchase price.

u. Between 1997 and 2005, AGA regularly shipped its products from Minnesota to the Chinese Distributor in China, via interstate and international freight carriers, for sale by the Chinese Distributor at the prices, and pursuant to the terms, discussed and agreed to by AGA, Officer A, Employee B, Employee C, the Chinese Distributor and others.

(All in violation of Title 18, United States Code, Section 371).

COUNT TWO
(Foreign Corrupt Practices Act)

18. Paragraphs 1 through 12 and 17 of this Information are realleged and incorporated by reference as if set out fully herein.

19. From in or about 1997, through in or about 2005, in the District of Minnesota, and elsewhere, defendant AGA MEDICAL CORPORATION willfully used the means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay and authorization of the payment of any money, or offer, gift, promise to pay, and authorization of the giving of anything of value to any foreign official for purposes of: (i) influencing the acts and decisions of such foreign officials in their official capacities; (ii) inducing such foreign officials to do and omit to do acts in violation of their lawful duties; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and

instrumentalities, in order to assist AGA in obtaining and retaining business for and with, and directing business to, themselves, to wit: emails were sent interstate and internationally, between and among Officer A, Employee B, Employee C, and the Chinese Distributor, and AGA's products were shipped from Minnesota to the Chinese Distributor in China via interstate and international freight carriers, in furtherance of corrupt payments to: (a) physicians employed by Chinese government-owned hospitals to cause them to purchase AGA's products; and (b) Chinese patent officials to cause them to approve AGA's patent applications.

(All in violation of Title 15, United States Code, Section 78dd-2(a)(1) and 18 U.S.C. § 2.)

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