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August 3, 2022

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United States District Court
District of Connecticut
FILED AT BRIDGEPORT
8/3/22 20
Dinah Milton Kinney, Clerk
By *Kinney/Deb* Deputy Clerk

Re: United States v. Axion Specialty Contracting LLC
Case No. 3:22CR____ (KAD)

Dear Attorney Glasser:

This letter confirms the plea agreement between your client, Axion Specialty Contracting LLC (the “defendant”), and the United States Department of Justice Antitrust Division and the United States Attorney’s Office for the District of Connecticut (the “Government”) concerning the referenced criminal matter.

THE PLEA AND OFFENSES

In consideration for the benefits offered under this agreement, the defendant agrees to waive its right to be indicted and agrees to plead guilty pursuant to Rule 11(c)(1)(C) to a one-count Information, charging it with one count of violating 15 U.S.C. § 1 (Conspiracy to Restrain Trade).

15 U.S.C. § 1 (Conspiracy to Restrain Trade): The defendant understands that, to be guilty of this offense, the following essential elements must be satisfied:

1. There was a combination or conspiracy to restrain trade during the time alleged in the Information;
2. An agent of the defendant, acting within the scope of his employment, knowingly joined the conspiracy; and
3. The activity of the conspiracy was within the flow of or substantially affected interstate or foreign commerce.

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THE PENALTIES

The maximum penalties permitted by statute are:

Probation

Pursuant to 18 U.S.C. § 3561(a), the Court may impose a term of probation. Pursuant to 18 U.S.C. § 3561(c)(1), if the Court imposes probation, it may be for a term of at least one year and not more than five years.

Fine

The Count carries a maximum fine of \$100 million. The defendant is also subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$100 million.

Special Assessment

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$400 on the count of conviction. The defendant agrees to pay the special assessment to the Clerk of the Court on the day the guilty plea is accepted.

Restitution

In addition to the other penalties provided by law, the Court may also order that the defendant make restitution under 18 U.S.C. § 3663, and the Government reserves its right to seek restitution on behalf of victims consistent with the provisions of 18 U.S.C. § 3663 and this plea agreement. The scope and effect of the order of restitution are set forth in the attached Rider Concerning Restitution. Restitution is payable immediately unless otherwise ordered by the Court.

Interest, penalties, and fines

Unless otherwise ordered, should the Court impose a fine or restitution of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of the fine or restitution not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine or restitution pursuant to 18 U.S.C. §§ 3572(h), (i) and 3612(g).

Plea Agreement Pursuant to Rule 11(c)(1)(C)

The parties agree that a fine in the amount of \$1,001,989, restitution in the amount of \$313,122, and no period of probation ("the Recommended Sentence") is a reasonable and appropriate sentence, which is sufficient, but not greater than necessary, to achieve the purposes of sentencing in light of the factors set forth under 18 U.S.C. § 3553(a).

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The defendant agrees to pay \$313,122 in restitution, in the amounts and to the victims identified in the attached Attachment A, which is a part of the plea agreement. The Government and the defendant agree to recommend to the Court that the court apportion restitution pursuant to the procedures set forth in 18 U.S.C. § 3664(h) to reflect the level of the defendant's contribution to the victims' losses, in the amounts and to the victims identified in Attachment A, which is a part of the plea agreement.

As specified in the Agreement Relating to Seized Funds section below, the Government and the defendant agree that \$1,574,128.67 be turned over to the Clerk of Court in anticipation of the payment of restitution, the criminal fine, and the special assessment. The Government and the defendant agree to recommend to the Court that the funds held by the Clerk of Court be used to satisfy the special assessment, in the sum of \$400, first, then the restitution order, in the sum of \$313,122, the criminal fine, in the sum of \$1,001,989, and the balance of \$258,617.67 to be returned to the defendant.

The Government and the defendant understand that the Court retains complete discretion to accept or reject the Recommended Sentence provided for in this plea agreement. If the Court does not accept the Recommended Sentence, the Government and the defendant agree that this plea agreement will be rendered void. If the Court does not accept the Recommended Sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)(2)(A)). If the defendant withdraws its plea of guilty, this plea agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this plea agreement or made in the course of plea discussions with the Government will not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this paragraph of this plea agreement, the statute of limitations period for any offense referred to in Paragraph 15 of this plea agreement will be tolled for the period between the date of signature of this plea agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of signature of this plea agreement, whichever period is greater.

Both parties jointly submit that this plea agreement, together with the record that will be created by the Government and the defendant at the plea and sentencing hearings, and the further disclosure described in subsequent paragraphs, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. Both parties will jointly request that the Court accept the defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment and plea, based upon the record provided by the defendant and the Government, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this plea agreement.

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Agreement Relating to Seized Funds

United States v. Contents of Accounts Ending 8704 and 8291 Held in the Name of Axion Specialty Contracting, LLC at Citizens Bank, 3:18MC28 (SALM)

The defendant agrees that funds in the amount of \$1,574,128.67, which were seized from accounts ending in 8704 and 8291 in the name of Axion Specialty Contracting, LLC, at Citizens Bank, pursuant to 18 U.S.C. § 981(a)(1)(A) and (C), (hereinafter, the “Seized Assets”), shall be transferred by the United States Marshals Service to the Clerk of Court to be applied to the special assessment, the restitution order, and criminal fine entered in this case. The balance of funds in the referenced accounts will be returned to the defendant, as described above. The defendant agrees to simultaneously execute a Stipulated Agreement to effectuate the transfer of the Seized Funds.

The defendant agrees to hold the United States, the Federal Bureau of Investigation, Department of Justice, the Antitrust Division, the Department of Defense – Office of Inspector General, the United States Attorney’s Office for the District of Connecticut, and their agents and employees harmless from any claims whatsoever in connection with the seizure, detention, and transfer of the Seized Assets covered by this agreement.

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 transfer of funds carried out in accordance with this plea agreement on any grounds, including that the transfer of funds constitutes an excessive fine or punishment. The defendant also understands and agrees that by virtue of its plea of guilty it waives any rights or cause of action to claim that it is a “substantially prevailing party” for the purpose of recovery of attorney fees and other litigation costs in any related proceeding pursuant to 28 U.S.C. § 2465(b)(1).

THE SENTENCING GUIDELINES

Applicability

The defendant understands that ordinarily, the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence. In this case, the defendant is entering its plea of guilty pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. This plea agreement contains the parties’ agreement concerning the disposition of this matter including the amount of restitution, the amount of a fine, the payment of the mandatory special assessment and the parties’ agreement, subject to acceptance by the Court, that no term of probation is warranted. The defendant understands that the Court has discretion to accept or reject this plea agreement.

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Stipulation

Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into the attached stipulation, which is a part of this plea agreement. The defendant understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention. The defendant understands that additional facts may inform the Court's judgment concerning whether to accept or reject the plea agreement in this case.

Guideline Stipulation

The parties agree as follows:

The Guidelines Manual in effect on the date of sentencing is used to determine the applicable guidelines range.

Pursuant to U.S.S.G. § 2R1.1(d)(1) and § 8C2.4(b), the defendant's advisory base fine is calculated by multiplying the defendant's volume of commerce by 20 percent. The volume of commerce attributable to the defendant is \$6,262,432, which results in an advisory base fine of \$1,252,486 (\$6,262,432 * 20%).

Pursuant to U.S.S.G. § 8C2.5, the parties stipulate to a culpability score of 4 points, calculated as follows:

5 points under U.S.S.G. § 8C2.5(a)
+1 point under U.S.S.G. § 8C2.5(b)(5)
-2 points under U.S.S.G. § 8C2.5(g)(2)

Therefore, pursuant to U.S.S.G. §§ 8C2.6 and 8C2.7, the advisory fine guideline range is \$1,001,989 to \$2,003,978. The parties agree that the appropriate fine in this case is the lowest end of that range, \$1,001,989.

Joint Fine Agreement

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Government and the defendant agree that the appropriate disposition of this case includes a fine payable by the defendant in the sum of \$1,001,989 payable from the Seized Funds to be held by the Clerk of Court after satisfaction of the restitution order.

Information to the Court

The Government will discuss the facts of this case with the United States Probation Office and will provide the Probation Officer with access to material in its file, with the exception of grand jury material. The Government expressly agrees to provide the following information regarding the following to the Probation Office:

- the defendant's background, management, and limited operations in Connecticut;

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