

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 09 CR 290
) Judge Robert W. Gettleman
)
)
DAVID YEN LEE)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant DAVID YEN LEE, and his attorney, DANIEL D. RUBINSTEIN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with theft of trade secrets, in violation of Title 18, United States Code, Section 1832(a)(3) (Counts 1-5).
3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.
4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count One of the indictment. Count One of the indictment charges that the defendant, with intent to convert a trade secret to the economic benefit of someone other than the owner

thereof, knowingly and without authorization did possess one or more trade secrets belong to Valspar Corporation ("Valspar"), namely, a proprietary document containing a master paint formula entitled "Batch Ticket" with a creation date "4/23/2008," such trade secrets being related to or included in products produced for and placed in interstate and foreign commerce, intending and knowing that the offense would injure Valspar, and knowing that the proprietary information was stolen, appropriated, obtained and converted without authorization, in violation of Title 18, United States Code, Section 1832(a)(3). In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline §1B1.3, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

On or about March 26, 2009, at Arlington Heights, in the Northern District of Illinois, and elsewhere, defendant, with intent to convert a trade secret to the economic benefit of someone other than the owner thereof, knowingly and without authorization did possess one or more trade secrets belonging to Valspar, namely, a proprietary document containing a master paint formula entitled "Batch Ticket" with a creation date "4/23/2008," such trade secrets being related to or included in products produced for and placed in interstate and

foreign commerce, intending and knowing that the offense would injure Valspar, and knowing that the proprietary information was stolen, appropriated, obtained and converted without authorization, in violation of Title 18, United States Code, Section 1832(a)(3).

Specifically, Valspar was an international company with offices located in Wheeling, Illinois and elsewhere that manufactured and sold paint and coating products in the United States and internationally. Huarun Limited ("Huarun") was a Valspar subsidiary located in the People's Republic of China ("PRC"). Defendant was a chemist and worked for Valspar's Architectural Coatings group as a Technical Director beginning in or about 2006. Defendant's employment responsibilities included scouting new paint technologies, coordinating with other paint laboratories, coordinating staffing and projects with Huarun, and overseeing Valspar's Technical Service Group – which conducted experiments for paint coloring. In addition, defendant acted as a liaison between Valspar and Huarun. As a result of his position, defendant oversaw the work of several employees.

Also as a result of defendant's position at Valspar, defendant had access to Valspar's secure internal computer network, including three different databases containing trade secrets, as well as various folders on a shared "V-drive" at the Wheeling, Illinois office. The V-drive was a shared area of the network where Valspar employees at Wheeling saved documents they worked on. In addition, one of the databases that defendant had access to was the database that stored Valspar's trade secret information in the form of proprietary chemical formulas, paint properties calculations, and emerging research and development

information. Defendant also had access to sensitive production information contained on two additional databases, which contain Valspar's regulatory, safety, storage, transport and related business practices.

From in or about September 2008 until in or about February 2009, defendant discussed and negotiated employment with Nippon Paint. Nippon Paint was an international company with offices located in Shanghai, PRC, that manufactured and sold paint and coating products in the United States and internationally. Nippon Paint had subsidiaries (hereinafter referred to collectively as "Nippon Paint") and maintained offices located in Asia and the United States. On February 27, 2009, defendant accepted employment with Nippon Paint. Defendant was to work at Nippon Paint as Vice-President of Technology and administrator of research and development. Defendant's employment at Nippon Paint was scheduled to begin on April 1, 2009 in Shanghai, PRC, and defendant purchased a ticket to Shanghai, PRC, for a flight scheduled to leave from Chicago O'Hare on March 27, 2009. Defendant did not inform Valspar that he had accepted employment at Nippon Paint until defendant's resignation on March 16, 2009.

From no later than November 2008 until in or about March 2009, defendant downloaded technical documents and materials belonging to Valspar, including trade secrets such as the paint formula entitled "Batch Ticket" with a creation date "4/23/2008," from Valspar's secure internal computer network. More specifically, in addition to the paint formula entitled "Batch Ticket" with a creation date "4/23/2008," defendant downloaded

approximately 160 original Batch Tickets for paints and coatings, as well as other trade secret information, including raw materials information, chemical formulas and calculations, sales and cost data for Valspar and Huarun products, and other Huarun and Valspar materials, including internal memoranda and product research. Defendant also removed physical documents and other materials from the offices of Valspar, including marketing data and information.

Defendant further copied certain downloaded technical documents, including trade secrets, to defendant's personal external data storage devices. For example, on March 9, 2009, and March 25, 2009, defendant transferred Valspar documents, including trade secrets, to external thumb drives. Defendant undertook these actions with the intent and knowledge that his theft would injure Valspar and knowing that the information that he stole were trade secrets and proprietary and that he intended on using the trade secrets for the benefit of another.

The parties estimate the value of the proprietary trade secret information of Valspar taken by defendant to be between \$7 million and \$20 million.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 10 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that

offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victim of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2009 Guidelines Manual.

b. **Offense Level Calculations.**

- i. The base offense level for the charge in Count One of the indictment is 6, pursuant to Guideline § 2B1.1;
- ii. A 20-level increase in the offense level is warranted pursuant to Guideline § 2B1.1(b)(1)(K) because the loss amount is greater than \$7,000,000 but less than \$20,000,000.
- iii. A 2-level increase in the offense level is warranted pursuant to Guideline § 3B1.3 because defendant abused a position of trust in a manner that significantly facilitated the commission of the offense.
- iv. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.
- v. In accord with Guideline §3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level

reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 25, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 57 to 71 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature and based on facts known to the parties as of the time of this Plea Agreement. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that while none of the Guideline calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Fed.R.Crim.P. 11(c)(1)(B) that certain components of those calculations – specifically, those set forth above in subparagraph (b) of this paragraph – are binding on the parties, and it shall be a breach of this Plea Agreement for either party to present or advocate a position inconsistent with the agreed calculations set forth in the identified subparagraph.

g. Defendant understands that with the exception of the Guideline provisions identified above as binding on the parties, the Guideline calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed.R.Crim.P. 11(c)(1)(B). Errors in applying or interpreting any of the Sentencing Guidelines (other than those identified above as binding) may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The government agrees to recommend that the Court impose a sentence of imprisonment at the low end of the applicable Guidelines range. Defendant is free to recommend any sentence that he deems appropriate.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution to the victim in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

13. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k) he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), if the defendant does not abide by any payment schedule set by the Court.

16. Defendant agrees that during his term of supervised release, defendant will not accept any employment in the paint industry.

Forfeiture

17. The indictment charges that defendant has subjected personal property to forfeiture namely the following:

Item No.	Description	Model Number	Serial Number
1	A Power HDD Enclosure	No model number	AP35VDBK
2	Western Digital Hard Drive	WD1600BB-00HTA0	WCAM51033068
3	Adaptec 3.5" Mobile Drive	ACS-100	50008026
4	Maxtor Hard Drive	6Y200P0A64411	Y65N4WXE
5	Simpletech Portable HDD Enclosure	96300-40001-001	No serial number
6	Western Digital Hard Drive	WD1600BB-00GUC0	WCAL98361013
7	Seagate Freeagent Desk Hard Drive	Freeagent Desk1500GB	2GEX0Z8P
8	Western Digital Hard Drive	WD1600B015	WCAL97517532
9	Western Digital Hard Drive	WD800B015-RNN	WCAM97624893

10	Western Digital Hard Drive	WD5000IO32-001	WCAPW1951498
11	Western Digital Hard Drive	WD800B015-RNN	WMAM98426396
12	Western Digital Hard Drive	WD1200XMS-00	WXEX07151032
13	Western Digital Hard Drive	WD2500JB-00REA0	WCANM4941978
14	Western Digital Hard Drive	WD2500BEVS-22USTO	WXE707F45774
15	USB HDD Enclosure	No model number	No serial number
16	Maxtor Hard Drive	6L200P0043211	L410X12G
17	COMPUSA External HDD Enclosure	CUHD80U2E-72	A0402418
18	Hitachi Hard Drive	Deskstar HDS 728080PLAT20	S2R8ARJB
19	FL External HDD Enclsore	No model number	No serial number
20	Maxtor Hard Drive	Diamond Max 10 6L300RO	L60LLNJG
21	A-Data SD card 4GSN	4 GB Turbo SD HC	6046NMC790010
22	Bocoda Thumbdrive	NB-BIU16MB-22	20031100050
23	Celane USB Thumbdrive	No model No. present	02111000AA395405
24	Corsair Flash Voyager Thumbdrive	G16G FG28C0356 08506035-0	11B57806F671B4
25	Dow Flash Thumbdrive	No model number	No serial number
26	Innovera Thumbdrive	THNU302GJOP6AG	0837M4J68919020
27	Netec 512mb 4GB Flash Drive	U208	8CFF4396WZ
28	SanDisk Cruzer 4GB Thumbdrive	SDCZ6-4096	BH06079GB
29	SanDisk Cruzer 4GB Thumbdrive	SDCZ6-4096RB	BH070615B
30	Acer laptop computer	Acer 6930 ZK2	LXASROXO38837382332500
31	Dell Inspiron 8100 laptop computer	Inspiron PP01X	NCN-075187-1291
32	Gateway laptop computer	M-6750	T4A7C31019741

33	HP Pavilion desktop computer	A1720N	MXX710012R
34	Lenovo 3000J desktop computer	Lenovo 3000 J	LX07827
35	Toshiba laptop computer	Satellite A65 PSA 60U0CU4114753Q	4114753Q
36	SONY 700MB CD-R	No serial number	No serial number
37	CD-R	No serial number	No serial number

because that property was used, and intended to be used, to commit and facilitate the commission of the violations. By entry of a guilty plea to Count One of the indictment, defendant acknowledges that the property identified above is subject to forfeiture.

18. Defendant agrees to the entry of a forfeiture judgment the property identified above, in that this property is subject to forfeiture. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture relinquishing any right of ownership he has in the above-described property and further agrees to the seizure of this property so that this property may be disposed of according to law. Defendant is unaware of any third party who has an ownership interest in, or claim to, the property subject to forfeiture and will cooperate with the United States during the ancillary stages of any forfeiture proceedings to defeat the claim of a third-party in the event a third party files a claim.

19. Defendant understands that forfeiture of this property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

20. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 09 CR 290.

21. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

22. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 10 days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

23. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

24. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

25. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the

Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

26. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

27. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

28. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject

to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

29. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

30. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

31. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

DAVID YEN LEE
Defendant

JESSICA ROMERO
Assistant U.S. Attorney

DANIEL D. RUBINSTEIN
Attorney for Defendant