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UNITED STATES OF AMERICA
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) SA CR 07-_____
13)
Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
14) SAMUEL SHANGTEH PENG
v.)
15)
SAMUEL SHANGTEH PENG,)
16 a.k.a. "SAM PENG,")
17 Defendant.)

18
19 1. This constitutes the plea agreement between SAMUEL
20 SHANGTEH PENG ("defendant") and the United States Attorney's
21 Office for the Central District of California ("the USAO") in the
22 above-captioned case. This agreement is limited to the USAO and
23 cannot bind any other federal, state, or local prosecuting,
24 administrative, or regulatory authorities.

25 PLEA

26 2. Defendant gives up the right to indictment by a grand
27 jury and agrees to plead guilty to a five-count information in

28 //

1 the form attached to this agreement or a substantially similar
2 form.

3 NATURE OF THE OFFENSE

4 3. In order for defendant to be guilty of counts one
5 through five, each of which charge unlawful export to a
6 prohibited entity in violation of Title 50, United States Code,
7 Sections 1702, 1705(b), and Title 15, Code of Federal
8 Regulations, Parts 744.11, 764.2(a), (e), (h), and 764.3(b)(2)(i),
9 the following must be true: (1) defendant willfully exported,
10 caused to be exported, or attempted to export regulated goods and
11 technology from the United States; (2) the regulated goods and
12 technology were destined to a prohibited entity that was listed
13 on the U.S. Department of Commerce's Entity List ("Prohibited
14 Entity"); (3) defendant knew that the regulated goods and
15 technology were destined to a Prohibited Entity; and (4)
16 defendant did not obtain an export license from the U.S.
17 Department of Commerce before exporting, causing the exportation,
18 or attempting to export the regulated goods and technology from
19 the United States to the Prohibited Entity.

20 Defendant admits that defendant is, in fact, guilty of these
21 offenses as described in the information.

22 PENALTIES

23 4. The statutory maximum sentence that the Court can
24 impose for each violation of Title 50, United States Code,
25 Sections 1702, 1705(b) is: 10 years imprisonment; a three-year
26 period of supervised release; a fine of \$250,000; and a mandatory
27 special assessment of \$100. Therefore, the total maximum
28 sentence for the offenses to which defendant is pleading guilty

1 is: 50 years imprisonment; a 3-year period of supervised release;
2 a fine of \$1,250,000; and a mandatory special assessment of \$500.

3 5. Supervised release is a period of time following
4 imprisonment during which defendant will be subject to various
5 restrictions and requirements. Defendant understands that if
6 defendant violates one or more of the conditions of any
7 supervised release imposed, defendant may be returned to prison
8 for all or part of the term of supervised release, which could
9 result in defendant serving a total term of imprisonment greater
10 than the statutory maximum stated above.

11 6. Defendant also understands that, by pleading guilty,
12 defendant may be giving up valuable government benefits and
13 valuable civic rights, such as the right to vote, the right to
14 possess a firearm, the right to hold office, and the right to
15 serve on a jury.

16 7. Defendant further understands that the convictions in
17 this case may subject defendant to various collateral
18 consequences, including but not limited to, deportation,
19 revocation of probation, parole, or supervised release in another
20 case, and suspension or revocation of a professional license.
21 Defendant understands that unanticipated collateral consequences
22 will not serve as grounds to withdraw defendant's guilty plea.

23 FACTUAL BASIS

24 8. Defendant and the USAO agree and stipulate to the
25 statement of facts provided below. This statement of facts
26 includes facts sufficient to support pleas of guilty to the
27 charges described in this agreement and to establish the
28 sentencing guideline factors set forth in paragraph 11 below. It

1 is not meant to be a complete recitation of all facts relevant to
2 the underlying criminal conduct or all facts known to defendant
3 that relate to that conduct.

4 On or about August 14, 1999, November 25, 1999, July 27,
5 2000, August 9, 2000, and September 19, 2000 defendant SAMUEL
6 SHANGTEH PENG knowingly and willfully exported, caused to be
7 exported, and attempted to export from the United States to India
8 regulated goods and technology, namely, vibration amplifiers,
9 cable assemblies, and vibration processor units, without having
10 first obtained the required export licenses from the United
11 States Department of Commerce, and with knowledge that these
12 items, on each occasion, were destined for Hindustan Aeronautics
13 Limited, Engine Division, Bangalore, India ("HAL"), a prohibited
14 entity on the United States Department of Commerce's Entity List
15 due to nuclear proliferation concerns. HAL was placed on the
16 United States Department of Commerce's Entity List on November
17 19, 1998 after India detonated a nuclear device on May 11, 1998,
18 in violation of the Comprehensive Nuclear Test Ban Treaty and the
19 Nuclear Non-Proliferation Treaty.

20 WAIVER OF CONSTITUTIONAL RIGHTS

21 9. By pleading guilty, defendant gives up the following
22 rights:

- 23 a) The right to persist in a plea of not guilty.
24 b) The right to a speedy and public trial by jury.
25 c) The right to the assistance of legal counsel at
26 trial, including the right to have the Court appoint counsel for
27 defendant for the purpose of representation at trial. (In this
28 regard, defendant understands that, despite his plea of guilty,

1 he retains the right to be represented by counsel - and, if
2 necessary, to have the court appoint counsel if defendant cannot
3 afford counsel - at every other stage of the proceedings.)

4 d) The right to be presumed innocent and to have the
5 burden of proof placed on the government to prove defendant
6 guilty beyond a reasonable doubt.

7 e) The right to confront and cross-examine witnesses
8 against defendant.

9 f) The right, if defendant wished, to testify on
10 defendant's own behalf and present evidence in opposition to the
11 charges, including the right to call witnesses and to subpoena
12 those witnesses to testify.

13 g) The right not to be compelled to testify, and, if
14 defendant chose not to testify or present evidence, to have that
15 choice not be used against defendant.

16 By pleading guilty, defendant also gives up any and all
17 rights to pursue any affirmative defenses, Fourth Amendment or
18 Fifth Amendment claims, and other pretrial motions that have been
19 filed or could be filed.

20 SENTENCING FACTORS

21 10. Defendant understands that the Court is required to
22 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
23 including the kinds of sentence and sentencing range established
24 under the United States Sentencing Guidelines ("U.S.S.G." or
25 "Sentencing Guidelines"), in determining defendant's sentence.
26 Defendant further understands that the Sentencing Guidelines are
27 advisory only, and that after considering the Sentencing
28 Guidelines and the other § 3553(a) factors, the Court may be free

1 to exercise its discretion to impose any reasonable sentence up
2 to the maximum set by statute for the crimes of conviction.

3 11. Defendant and the USAO agree and stipulate to the
4 following applicable sentencing guideline factors (Sentencing
5 Guidelines effective November 1, 1998):

6 Base Offense Level : 22 [U.S.S.G. § 2M5.1(a)(1)]

7 Adjustments

8 Acceptance of
9 Responsibility : -3 [U.S.S.G. § 3E1.1(a)&(b)]

10 Total Offense Level : 19

11
12 Defendant and the USAO reserve the right to argue that additional
13 specific offense characteristics, adjustments, and departures
14 under the Sentencing Guidelines are appropriate.

15 12. There is no agreement as to defendant's criminal
16 history or criminal history category.

17 13. Defendant and the USAO, pursuant to the factors set
18 forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and
19 (a)(7), further reserve the right to argue for a sentence outside
20 the sentencing range established by the Sentencing Guidelines.

21 14. The stipulations in this agreement do not bind either
22 the United States Probation Office or the Court. Both defendant
23 and the USAO are free to: (a) supplement the facts by supplying
24 relevant information to the United States Probation Office and
25 the Court, (b) correct any and all factual misstatements relating
26 to the calculation of the sentence, and (c) argue on appeal and
27 collateral review that the Court's sentencing guidelines
28 calculations are not error, although each party agrees to

1 maintain its view that each and every fact set forth in paragraph
2 8's statement of factual basis are true and correct, and the
3 calculations in paragraph 11 are consistent with the facts of
4 this case.

5 DEFENDANT'S OBLIGATIONS

6 15. Defendant agrees that he will:

7 a) Plead guilty as set forth in this agreement.

8 b) Not knowingly and willfully fail to abide by all
9 sentencing stipulations contained in this agreement.

10 c) Not knowingly and willfully fail to: (i) appear as
11 ordered for all court appearances, (ii) surrender as ordered for
12 service of sentence, (iii) obey all conditions of any bond, and
13 (iv) obey any other ongoing court order in this matter.

14 d) Not commit any crime; however, offenses which
15 would be excluded for sentencing purposes under U.S.S.G.
16 § 4A1.2(c) are not within the scope of this agreement.

17 e) Not knowingly and willfully fail to be truthful at
18 all times with Pretrial Services, the U.S. Probation Office, and
19 the Court.

20 f) Pay the applicable special assessments at or
21 before the time of sentencing unless defendant lacks the ability
22 to pay.

23 16. Defendant further agrees to cooperate fully with the
24 USAO, U.S. Department of Commerce, U.S. Department of Homeland
25 Security, U.S. Naval Criminal Investigative Service, and, as
26 directed by the USAO, any other federal, state, local, or foreign
27 law enforcement agency. This cooperation requires defendant to:
28

1 a) Respond truthfully and completely to all questions
2 that may be put to defendant, whether in interviews, before a
3 grand jury, or at any trial or other court proceeding.

4 b) Attend all meetings, grand jury sessions, trials
5 or other proceedings at which defendant's presence is requested
6 by the USAO or compelled by subpoena or court order.

7 c) Produce voluntarily all documents, records, or
8 other tangible evidence relating to matters about which the USAO,
9 or its designee, inquires.

10 d) Act, if requested by the USAO to do so by the
11 USAO, in an undercover capacity to the best of defendant's
12 ability in connection with criminal investigations by federal,
13 state, or local law enforcement authorities, in accordance with
14 the instructions of those law enforcement authorities. Defendant
15 agrees not to act undercover, tape record any conversations, or
16 gather any evidence unless expressly instructed or authorized to
17 do so by federal, state, or local law enforcement authorities.

18 THE USAO'S OBLIGATIONS

19 17. If defendant complies fully with all defendant's
20 obligations under this agreement, the USAO agrees:

21 a) To abide by all sentencing stipulations contained
22 in this agreement.

23 b) Except for criminal tax violations (including
24 conspiracy to commit such violations chargeable under 18 U.S.C.
25 § 371), not to further prosecute defendant for violations of the
26 Export Administration Act of 1979, 50 U.S.C. App. §§ 2401-2420;
27 International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-
28 1706; Export Administration Regulations, 15 C.F.R. §§ 730-774;

1 Arms Export Control Act, 22 U.S.C. § 2778; International Traffic
2 in Arms Regulations, 22 C.F.R. §§ 120-130; and money laundering,
3 18 U.S.C. §§ 1956, 1957, arising out of defendant's employment at
4 Endevo Corporation between November 1981 and April 9, 2004.
5 Defendant understands that the USAO is free to prosecute
6 defendant for any other unlawful past conduct or any unlawful
7 conduct that occurs after the date of this agreement. Defendant
8 understands that the USAO may present to the United States
9 Probation Office and to the Court, and that the United States
10 Probation Office and the Court may consider at the time of
11 sentencing, any uncharged relevant conduct of the defendant
12 pursuant to U.S.S.G. § 1B1.3.

13 c) At the time of sentencing, provided that defendant
14 demonstrates an acceptance of responsibility for the offenses up
15 to and including the time of sentencing, to recommend a two-level
16 reduction in the applicable sentencing guideline offense level,
17 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
18 move for an additional one-level reduction if available under
19 that section.

20 d) To recommend that defendant be sentenced at the
21 low end of the applicable Sentencing Guidelines range provided
22 that the total offense level as calculated by the Court is 19 or
23 higher (prior to any departure requested in a motion by the USAO
24 for a downward departure under U.S.S.G. § 5K1.1) and provided
25 that the Court does not depart downward in offense level or
26 criminal history category (except pursuant to, and to the extent
27 requested in, a motion by the USAO for a downward departure under
28 U.S.S.G. § 5K1.1). For purposes of this agreement, the low end

1 of the Sentencing Guidelines imprisonment range is that defined
2 by the Sentencing Table in U.S.S.G. Chapter 5, Part A, without
3 regard to reductions in the term of imprisonment that may be
4 permissible through the substitution of community confinement or
5 home detention as a result of the total offense level falling
6 within Zone B or Zone C of the Sentencing Table.

7 e) Not to offer as evidence in its case-in-chief in
8 the above-captioned case or any other prosecution that may be
9 brought against defendant by the USAO, or in connection with any
10 sentencing proceeding in any case that may be brought against
11 defendant by the USAO, any statements made by defendant or
12 documents, records, or tangible evidence provided by defendant
13 pursuant to this agreement or the letter agreement previously
14 entered into by the parties dated July 9, 2007 ("the Letter
15 Agreement"). Defendant agrees, however, that the USAO may use
16 such statements, documents, records, and tangible evidence: (1)
17 to obtain and pursue leads to other evidence, which evidence may
18 be used for any purpose, including any prosecution of defendant,
19 (2) to cross-examine defendant should defendant testify, or to
20 rebut any evidence, argument or representations made by defendant
21 or a witness called by defendant in any trial, sentencing
22 hearing, or other court proceeding, and (3) in any prosecution of
23 defendant for false statement, obstruction of justice, or
24 perjury.

25 f) Not to use any information provided by defendant
26 pursuant to this agreement or the Letter Agreement against
27 defendant at sentencing for the purpose of determining the
28 applicable guideline range, including the appropriateness of an

1 upward departure, and to recommend to the Court that such
2 information not be used in determining the point in the
3 Sentencing Guidelines range at which defendant should be
4 sentenced. Defendant understands, however, that information
5 provided by defendant pursuant to this agreement or the Letter
6 Agreement will be disclosed to the probation office and the
7 Court, and that the Court may use this information for the
8 purposes set forth in U.S.S.G. § 1B1.8(b).

9 g) In connection with defendant's sentencing, to
10 bring to the Court's attention the nature and extent of
11 defendant's cooperation.

12 h) If the USAO determines, in its exclusive judgment,
13 that defendant has both complied with his obligations under
14 paragraph 16 above and provided substantial assistance to law
15 enforcement in the prosecution or investigation of another
16 ("substantial assistance"), to move the Court pursuant to
17 U.S.S.G. § 5K1.1 to impose a sentence below the sentencing range
18 otherwise provided by the sentencing guidelines.

19 DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

20 18. Defendant understands the following:

21 a) Any knowingly false or misleading statement by
22 defendant will subject defendant to prosecution for false
23 statement, obstruction of justice, and perjury and will
24 constitute a breach by defendant of this agreement.

25 b) Nothing in this agreement requires the USAO or any
26 other prosecuting or law enforcement agency to accept any
27 cooperation or assistance that defendant may offer, or to use it
28 in any particular way.

1 defendant's guilty pleas, and the USAO will be relieved of all of
2 its obligations under this agreement. In particular:

3 a) The USAO will no longer be bound by any agreements
4 concerning sentencing and will be free to seek any sentence up to
5 the statutory maximum for the crimes to which defendant has
6 pleaded guilty.

7 b) The USAO will no longer be bound by any agreements
8 regarding criminal prosecution, and will be free to prosecute
9 defendant for any crime, including charges that the USAO would
10 otherwise have been obligated not to prosecute pursuant to this
11 agreement.

12 c) The USAO will be free to prosecute defendant for
13 false statement, obstruction of justice, and perjury based on any
14 knowingly false or misleading statement by defendant.

15 d) The USAO will no longer be bound by any agreement
16 regarding the use of statements, documents, records, tangible
17 evidence, or information provided by defendant, and will be free
18 to use any of those in any way in any investigation, prosecution,
19 or civil or administrative action. Defendant will not be able to
20 assert either (1) that those statements, documents, records,
21 tangible evidence, or information were obtained in violation of
22 the Fifth Amendment privilege against compelled self-
23 incrimination, or (2) any claim under the United States
24 Constitution, any statute, Rule 11(f) of the Federal Rules of
25 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or
26 any other federal rule, that statements, documents, records,
27 tangible evidence, or information provided by defendant before or
28 after the signing of this agreement, or any leads derived

1 therefrom, should be inadmissible.

2 20. Following a knowing and willful breach of this
3 agreement by defendant, should the USAO elect to pursue any
4 charge that was dismissed or not filed as a result of this
5 agreement, then:

6 a) Defendant agrees that any applicable statute of
7 limitations is tolled between the date of defendant's signing of
8 this agreement and the commencement of any such prosecution or
9 action.

10 b) Defendant gives up all defenses based on the
11 statute of limitations, any claim of preindictment delay, or any
12 speedy trial claim with respect to any such prosecution, except
13 to the extent that such defenses existed as of the date of
14 defendant's signing of this agreement.

15 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

16 21. Defendant gives up the right to appeal any sentence
17 imposed by the Court, and the manner in which the sentence is
18 determined, provided that (a) the sentence is within the
19 statutory maximum specified above and is constitutional, (b) the
20 Court in determining the applicable guideline range does not
21 depart upward in offense level or criminal history category and
22 determines that the total offense level is 19 or below, and (c)
23 the Court imposes a sentence within or below the range
24 corresponding to the determined total offense level and criminal
25 history category. Defendant also gives up any right to bring a
26 post-conviction collateral attack on the convictions or sentence,
27 except a post-conviction collateral attack based on a claim of
28 ineffective assistance of counsel, a claim of newly discovered

1 evidence, or a explicitly retroactive change in the applicable
2 Sentencing Guidelines, sentencing statutes, or statutes of
3 conviction. Notwithstanding the foregoing, defendant retains the
4 ability to appeal the court's determination of defendant's
5 criminal history category and the conditions of supervised
6 release imposed by the court, with the exception of the
7 following: standard conditions set forth in district court
8 General Orders 318 and 01-05; the drug testing conditions
9 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol
10 and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

11 22. The USAO gives up its right to appeal the sentence,
12 provided that (a) the Court in determining the applicable
13 guideline range does not depart downward in offense level or
14 criminal history category (except by a downward departure in
15 offense level pursuant to, and to the extent requested by, the
16 USAO in a motion under U.S.S.G. § 5K1.1), (b) the Court
17 determines that the total offense level is 19 or above prior to
18 any departure under U.S.S.G. § 5K1.1, and (c) the Court imposes a
19 sentence within or above the range corresponding to the
20 determined total offense level (after any downward departure
21 under U.S.S.G. § 5K1.1 and criminal history category).

22 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

23 23. Defendant agrees that if any count of conviction is
24 vacated, reversed, or set aside, the USAO may: (a) ask the Court
25 to resentence defendant on any remaining counts of conviction,
26 with both the USAO and defendant being released from any
27 stipulations regarding sentencing contained in this agreement,
28 (b) ask the Court to void the entire plea agreement and vacate

1 defendant's guilty pleas on any remaining counts of conviction,
2 with both the USAO and defendant being released from all of their
3 obligations under this agreement, or (c) leave defendant's
4 remaining convictions, sentence, and plea agreement intact.
5 Defendant agrees that the choice among these three options rests
6 in the exclusive discretion of the USAO.

7 COURT NOT A PARTY

8 24. The Court is not a party to this agreement and need not
9 accept any of the USAO's sentencing recommendations or the
10 parties' stipulations. Even if the Court ignores any sentencing
11 recommendation, finds facts or reaches conclusions different from
12 any stipulation, and/or imposes any sentence up to the maximum
13 established by statute, defendant cannot, for that reason,
14 withdraw defendant's guilty pleas, and defendant will remain
15 bound to fulfill all defendant's obligations under this
16 agreement. No one - not the prosecutor, defendant's attorney, or
17 the Court - can make a binding prediction or promise regarding
18 the sentence defendant will receive, except that it will be
19 within the statutory maximum.

20 NO ADDITIONAL AGREEMENTS

21 25. Except as set forth herein, there are no promises,
22 understandings or agreements between the USAO and defendant or
23 defendant's counsel. This agreement supersedes and replaces the
24 Letter Agreement. Nor may any additional agreement,
25 understanding or condition be entered into unless in a writing
26 signed by all parties or on the record in court.

27

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1 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

2 26. The parties agree and stipulate that this Agreement
3 will be considered part of the record of defendant's guilty plea
4 hearing as if the entire Agreement had been read into the record
5 of the proceeding.

6 This agreement is effective upon signature by defendant and
7 an Assistant United States Attorney.

8 AGREED AND ACCEPTED

9 UNITED STATES ATTORNEY'S OFFICE
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 GEORGE S. CARDONA
12 United States Attorney

13 

14 TODD T. TRISTAN
15 Assistant United States Attorney

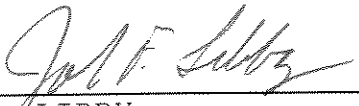
16 7/25/07
17 Date


18 I have read this agreement and carefully discussed every
19 part of it with my attorney. I understand the terms of this
20 agreement, and I voluntarily agree to those terms. My attorney
21 has advised me of my rights, of possible defenses, of the
22 Sentencing Guideline provisions, and of the consequences of
23 entering into this agreement. No promises or inducements have
24 been made to me other than those contained in this agreement. No
25 one has threatened or forced me in any way to enter into this
26 agreement. Finally, I am satisfied with the representation of my
27 attorney in this matter.

28 
SAMUEL SHANGTEH PENG
Defendant

7/25/07
Date

1 I am Samuel Shangteh Peng's attorney. I have carefully
2 discussed every part of this agreement with my client. Further,
3 I have fully advised my client of his rights, of possible
4 defenses, of the Sentencing Guidelines' provisions, and of the
5 consequences of entering into this agreement. To my knowledge,
6 my client's decision to enter into this agreement is an informed
7 and voluntary one.

8
9 
10 _____
11 JOHN F. LIBBY
12 Counsel for Defendant
13 Samuel Shangteh Peng
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Date