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Filed

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12
13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 SAY LYE OW,
17 Defendant.

No. CR-00-20110 JF

PLEA AGREEMENT

18 I, Say Lye Ow, and the United States Attorney's Office for the Northern District of
19 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
20 pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure:

21 The Defendant's Promises

22 1. I agree to plead guilty to a superseding information charging me with copying a
23 trade secret in violation of 18 U.S.C. § 1832(a)(2), and alleging criminal forfeiture pursuant to 18
24 U.S.C. § 1834(a)(2). I agree that the elements of copying a trade secret offense and the
25 maximum penalties are as follows: (1) copying information without authorization, (2) knowing
26 or believing that the information was a trade secret, (3) the information was in fact a trade secret,
27 (4) with intent to convert the trade secret to the economic benefit of anyone other than its owner,
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PLEA AGREEMENT
No. CR-00-20110 JF

1 (5) intending or knowing that the owner would be injured, and (6) the trade secret was related to
2 or included in a product that was produced for or placed in interstate or foreign commerce.

- | | | | |
|---|----|---------------------------------|---|
| 3 | a. | Maximum prison sentence | 10 years |
| 4 | b. | Maximum fine | \$250,000 or twice the gross gain or twice the gross loss |
| 5 | c. | Maximum supervised release term | 3 years |
| 6 | d. | Mandatory special assessment | \$100 |
| 7 | e. | Restitution | to be determined |

8 I also agree to the following forfeiture as alleged in the superseding information: my interest
9 in the computer system which was located at my residence at 750 North Shoreline Boulevard,
10 Apartment #86, Mountain View, California. I admit and agree that I used, and intended to use,
11 the computer referred to above to commit and facilitate the commission of the copying a trade
12 secret offense.

13 2. I agree that I am guilty of the copying a trade secret offense to which I will plead
14 guilty, and I agree that the following facts are true: On or about July 24, 1998, in the Northern
15 District of California, I copied without authorization computer files relating to the design and
16 testing of the Merced microprocessor (now known as the Itanium microprocessor). I knew at the
17 time that it was a trade secret belonging to Intel Corporation. I copied that trade secret with
18 intent to convert it to my own economic benefit by using it at my new employment. I knew at the
19 time that my act would injure Intel Corporation, in that I – as a former employee of Intel – would
20 possess Intel's trade secret information without its knowledge. I agree that the information I
21 copied was in fact a trade secret and that it was related to a product that was produced for and
22 later placed in interstate and foreign commerce.

23 3. I agree to give up all rights that I would have if I chose to proceed to trial,
24 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
25 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
26 any other Fourth or Fifth Amendment claims; to any further discovery from the government, as
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may be limited by United States v. Ruiz, 241 F.3d 1157 (9th Cir. 2001); and to pursue any affirmative defenses and present evidence.

4 I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal my sentence.

5 I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except that I reserve my right to claim that my counsel was ineffective in connection with the negotiation of this plea agreement or the entry of my guilty plea.

6 I agree not to ask the Court to withdraw my guilty plea at any time after it is entered.

7 I reserve the right to take whatever positions I deem appropriate regarding the Guidelines calculations, as well as the right to move for a downward departure from the Guidelines range determined by the Court. I intend to file a motion for a downward departure seeking a sentence of imprisonment of less than one year. If I file a motion for downward departure, the government reserves the right to take whatever position it deems appropriate as to that motion. I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offenses or the sentencing decision. I also agree that regardless of the Court's Guidelines calculations and decision on my motion for downward departure, I will not be entitled, nor will I ask, to withdraw my guilty plea.

8 I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the government, or

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14. The government agrees to the following:

a. For purposes of Guidelines calculations pursuant to U.S.S.G. § 2B1.1(b)(1) and Application Note 2 to that section, loss means the value of the property taken. In this case, measuring loss by the "reasonable replacement cost to the victim" would overstate the seriousness of the offense.

b. The trade secret was recovered and the victim did not suffer any actual loss.

c. If the defendant meets the requirements of U.S.S.G. § 3E1.1, the government will recommend that the offense level be decreased by 2 levels or, if the offense level is level 16 or greater, it will recommend that the offense level be decreased by 3 levels.


The Defendant's Affirmations

15. I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

16. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

17. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

Dated: 9/19/01

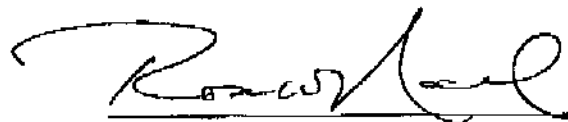


SAY LYE OW
Defendant

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DAVID W. SHAPIRO
United States Attorney

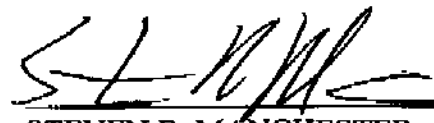
Dated: 9/14/01



ROSS W. NADEL
Assistant United States Attorney

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: 9/19/01



STEVEN R. MANCHESTER
Attorney for Defendant