IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, Plaintiff, v. RIGEL OPTICS, INC., Defendant.	)	Criminal No. 4:08-CR-086 PLEA AGREEMENT

IT IS HEREBY AGREED by and between the plaintiff, the United States of America, and the Defendant, RIGEL OPTICS, INC. (hereinafter "Rigel Optics"), and respective counsel, as follows:

A. CHARGES

1. Subjeet Offense. Defendant will plead guilty to Count 12 of the Indictment dated June 23, 2008, whieh charges a violation of Title 22, United States Code, Section 2778(b)(2), that is, violation of the Arms Export Control Act.

2. Charges Being Dismissed. The United States Attorney agrees to dismiss the rcmaining counts of the Indictment as to this Defendant at the time of sentencing, contingent upon the Defendant complying with all the terms of this Agreement.

3. No Further Prosecution. The United States Attorney agrees that the Defendant will not be charged in the Southern District of Iowa with any other federal criminal offense under Titles 13, 18, 22, or 49 of the United States Code, arising from or directly relating to this investigation. This paragraph and this plea agreement do not apply to any criminal act oeeurring after the date of this agreement.

B. CONSEQUENCES OF PLEA

4. Statutory Penalties. The subject offense (18 U.S.C. §2778(b)(2)) carries a range of punishment for a corporation of a maximum fine of not more than $1,000,000. A special assessment of $400 must be imposed by the sentencing court for each count of conviction pursuant to 18 U.S.C. §3013(a)(2)(B).

C. SENTENCING CONSIDERATIONS

5. Sentencing Factors--Statute or Guideline. The sentence to be imposed is solely within the Court's discretion, as guided by 18 U.S.C. §3571(c) and the United States Sentencing Guidelines which apply in an advisory manner to this offense. The Sentencing Guidelines establish a sentencing range based upon various factors present in the case, which include, but are not limited to the following:

(a) the amount of pecuniary loss caused;

(b) the amount of pecuniary gain to the organization;

(b) the nature and circumstances of the offense; and

(c) whether the organization operated primarily for a criminal purpose or primarily by criminal means.

Both parties reserve the right to argue that additional specific offense characteristics, adjustments and departures may be appropriate.

6. No Promises. The United States Attorney makes no representations or promises as to the sentence to be imposed, as this is solely within the Court's discretion. Although the parties may have discussed the possibilities of various factors having an impact on the sentence and the possibility of a certain sentencing range, the parties agree that no discussion resulted in

any express of implied promise or guarantee concerning the actual sentence to be imposed.

7. No Right to Withdraw Plea. The Defendant understands that the Defendant will have no right to withdraw the Defendant's plea if the sentence imposed, or the application of the United States Sentencing Guidelines is other than that which the Defendant anticipated. The parties understand the Court may defer its decision to accept the plea until there has been an opportunity to review a presentence investigation report.

8. Evidence at Sentencing. The Defendant, the Defendant's attorney, and the United States Attorney may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, provided such offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information to the U. S. Probation Office for use in preparing a presentence report. The parties agree that either party may present evidence by way of telephone or deposition transcript, and to this extent Defendant agrees to waive any right to face-to-face confrontation at the sentencing hearing.

9. Special Assessment. The Defendant agrees to pay to the United States a special assessment of $400 as required by Title 18, United States Code, § 3013. The Defendant agrees to make such payment (by cashiers check or money order payable to "Clerk, U. S. District Court") to the U.S. Clerk of Court within two weeks (14 days) of the execution of this agreement or by the time of the entry of guilty plea, whichever first occurs. This is a material condition of this agreement.

10. Full Payment of Restitution. The parties agree that Defendant shall pay

restitution, in an amount to be determined by the Court. If the Court determines that Defendant is unable to make immediate full payment of all restitution, Defendant shall be required to make restitution payments as a condition of any period of probation imposed, pursuant to a payment plan established and ordered by the Court. Defendant understands that the failure to pay these obligations--subject to Defendant's good faith ability to pay--may be considered a breach of Defendant's probation, and may result in an additional period of probation being imposed.

D. NATURE OF THE OFFENSE

11. Elements. The elements of the charge of violation of the Arms Export Control Act under 22 U.S.C. § 2778(b)(2) are:

First, the Defendant exported, or caused to be exported, from the United States an item or items designated on the United States Munitions List;

Second, the Defendant did not obtain a license from the Department of State to export the item or items; and

Third, the Defendant did sueh acts knowingly and willfully.

12. Elements Understood and Admitted -- Factual Basis. Defendant has fully discussed the facts of this ease with Defendant's attorney. Defendant has committed each of the elements of the erime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed and may be considered as "relevant conduct" for purposes of determining Defendant's sentence under the U.S. Senteneing Guidelines:

(a) Rigel Opties, Inc., ("Rigel Optics") previously loeated in DeWitt, Iowa, was incorporated in Iowa in 2002. Rigel Opties was engaged in the business of selling night

vision optical equipment, including the export of such equipment to customers outside the United States. Donald Wayne Hatch was the president of Rigel Optics, and primarily controlled the activities of the business from his residence in the State of Washington.

(b) Rigel Optics imported night vision optical equipment from Russia and Belarus for resale to its domestic and international customers. Rigel Optics sold image intensification and night sighting equipment, including night vision rifle scopes, second generation night vision goggles, and night vision monoeulars.

(c) Rigel Optics was primarily an Internet-based business, and had no walk-in customers. When orders were received via the Internet, Donald Hatch would receive and compile the daily orders. This was originally done by Defendant Donald Hatch creating a spreadsheet with all of that day's orders, and then forwarding the spreadsheet and orders to Rochelle Callender for processing, and later done by creating an online "shopping cart" or "repository" for Rochelle Callender to access. Rochelle Callender was the full-time offiee manager located in DeWitt, Iowa, which is locatcd in Clinton County. The spreadsheet or online "repository" sent from Donald Hatch to Rochelle Callender would include information such as the product ordered, the quantity, the payment method, and comments and instructions on how to "declare" the shipment for export. Rochelle Callender would then "fill the orders" at the business office in DeWitt, Iowa, and ship the orders via UPS, DHL, or other common carrier.

(d) When Roehelle Callender was initially trained to do her job, she was told to value international shipments at less than one hundred dollars ($100), and declare thenı as gifts. Undervaluation of international orders had an effect on the amount which eustomers of

Rigel Optics would pay in import duties or taxes when the products were received in the foreign countries.

(e) On June 12, 2002, Special Agent Joel Christy, U.S. Department of Commerce, Bureau of Industry and Security (BIS), Office of Export Enforcement (OEE), Hillside, Illinois, conducted an industry outreach visit to Rigel Opties at the business address in DeWitt, Iowa. During the visit, the office manager, Rochelle Callender, was provided with Department of Commerce documents whieh explained U.S. export requirements, as well as instructions as to how to access the Department of Commerce website in order to locate the U.S. Export Administration Regulations.

(f) In November, 2002, the Department of Commerce, BIS, OEE, sent a letter via U.S. certified mail to the attention of Mike Hatch c/o Rigel Optics at 1510 Ninth Street, DeWitt, Iowa. The letter advised that the night vision scopes sold by Rigel Optics were subject to the export licensing authority of the Department of State, Office of Defense and Trade Control (DTC). The letter further instrueted Rigel Optics to cease exporting all night vision rifle scopes until the rifle scopes were properly classified by the Department of State, and any applicable export licenses had been received.

(g) At no time during 2002 or 2003 did Rigel Optics register with the Department of State, Directorate of Defense Trade Controls (DDTC), nor did Rigel Optics register with the Bureau of Aleohol, Tobaeco, Firearms, and Explosives (ATF) regarding the importation of night vision rifle scopes.

(h) In October, 2003, a review of the Rigel Optics website at www.RigelOptics.com revealed specific information indicating that "[a]ll international shipments are declared as a gift with a minimum invoice value to avoid any potential delays at customs" and "[a]ll international shipments are tax and VAT free.". Donald Hatch was the individual at Rigel Optics primarily responsible for marketing of products sold by Rigel Optics, and Donald Hatch assisted in the creation of the website of Rigel Optics.

(I) A Shipper's Export Declaration ("SED") form, United States Department of Commerce Form Number 7525-V, is signed under penalties of perjury and is filed with, and maintained by, United States Department of Commerce and United States Customs and Border Protection for international shipments from the United States. On the SED, an exporter is required to provide certain information regarding an international shipment, including the value of the shipment, the final destination, and, if applicable, a license that is required to ship a particular product to a particular country. The United States Department of Commerce uses these forms to track the United States' foreign trade for economic and trade policy purposes.

(j) Rigel Optics had several regular customers that requested shipments to foreign countries. Defence Security Systems, located in Solbiate Arno, Italy, was a regular customer of Rigel Optics.

(k) On October 6, 2003, Luciano Schenato submitted an order on behalf of Defence Security Systems to Rigel Optics that included an order for two Rigel Model 3502 goggles, which are "generation 2" night vision goggles. Pursuant to training and direction which she had received, Rigel Optics office manager Rochelle Callender prepared the invoice, waybill

and SED for the shipment which was sent to Defenee Security Systems on October 7, 2003. In the SED, Rigel Optics office manager entered the notation "NLR" (no license required) in block 27 which requested the license number. The DHL waybill form also indicated "NLR" in a space where the lieense number was to be placed. In fact, because the shipment contained "generation 2" night vision goggles, a license was required for the shipment.

(l) On October 11, 2003 (four days after, and in response to, the afore-mentioned shipment), Donald Hatch sent a letter by facsimile to "Dcfense Security Systems, Attn: Luciano" specifieally discussing the steps that Defendant Donald Hatch was taking in order to insure that Defence Security Systems in Italy would continue to obtain quality "generation 2" night vision equipment. A copy of that letter (which was signed by "Donnie" Hatch and hand marked as "cc: Rochelle Callender"") was found at the residence of Defendant Donald Hatch at the time of the execution of a search warrant on December 4, 2003.

(m) At the time of shipments from Rigel Optics to Defence Security Systems in October, 2003, Defendant Donald Hatch knew that a license was required for export shipments of "generation 2" night vision goggles. Rigel Model 3502 night vision goggles are "generation 2" night vision goggles, which are on the United States Munitions List as set forth at 22 CFR §121.1, Catcgory XII(c).

(n) On October 24, 2003, Luciano Schenato submitted another order on behalf of Defence Security Systems to Rigel Optics that included an order for two Rigel Model 3502 goggles, which are "generation 2" night vision goggles. Pursuant to training and direction which she had received, the Rigel Optics office manager prepared the invoice, DHL waybill and SED

for the shipment which was sent to Defence Security Systems on October 24, 2003. In the SED, the Rigel Optics office manager entered the notation "NLR" (no license required) in block 27 which requested the lieense number. The DHL waybill form also indicated "NLR" in a space where the license number was to be placed. In fact, because the shipment eontained "generation 2" night vision goggles, a license was required for the shipment.

13. Truthfulness of Factual Basis. Defendant aeknowledges that the above statements are true. Defendant also understands that, during the change of plea hearing, the judge and the prosecutor may ask the Defendant questions under oath about the offense to which the Defcndant is pleading guilty, in the presence of Defendant's attorney. Defendant understands that Defendant must answcr these questions truthfully, and that Defendant can be proseeuted for perjury if the Defendant gives any false answers.

E. Limited Waiver of Appeal and § 2255

14. Limited Waiver of Appeal Rights. The Defendant hereby knowingly and expressly waives any and all rights to appeal Defendant's conviction in this ease, including a waiver of all motions, defenses and objections which Defendant could assert to the charges or to the Court's entry of Judgment against Defendant, and any and all issues inhering therein, **except** for the following:

(a) The right to timely challenge Defendant's conviction and the sentence of the Court should the Eighth Circuit Court of Appeals or the United States Supreme Court later find that the substantive basis of Defendant's plea of guilty and resulting conviction fails to state a crime upon which Defendant could be convicted.

(b) Any issue solcly involving a matter of law brought to the Court's attention at the time of sentencing, in which the Court agrees further review is needed.

(c) Review pursuant to 18 U.S.C. § 3742 of any sentence imposed in connection with the conviction resulting from this agreement.

15. Limited Waiver of Post-Conviction Review. The Defendant further knowingly and expressly waives any and all rights to contest his conviction of the subject charges in any post-conviction proceedings, including any proceedings under Title 28 U.S.C. § 2255, subject to the exceptions set forth in the preceding paragraph and the following:

(a) The right to seek post-conviction relief based on grounds of ineffective assistance of counsel and/or prosecutorial misconduct, if the grounds for such a claim are not known to the Defendant, or not reasonably knowable by the Defendant, at the time the Defendant enters a plea pursuant to this plea agreement.

16. Effect of Filing An Appeal or Post Conviction Motion. It is a material breach of the plea agreement to file a petition for post-conviction review of the sentence of conviction or to file any notice of appeal or other collateral attack to contest the conviction or sentence in this case for any reason other than for the exceptions set forth in the preceding two numbered paragraphs.

F. GENERAL MATTERS

17. Voluntariness of Plea. The Defendant acknowledges that the Defendant is entering into this plea agreement and is pleading guilty because the Defendant is guilty. The Defendant further acknowledges that the Defendant is entering into this agreement without reliance upon any discussions between the United States Attorney and the Defendant (other than those described in this plea agreement), without promise of benefit of any kind (other than any concessions contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. The Defendant further acknowledges that he understands the nature of the

offenses to which the Defendant is pleading guilty, ineluding the penalties provided by law.

18. Limited Scope of Agreement. This agreement does not limit, in any way, the right or ability of the United States Attorney to investigate or prosecute the Defendant for crimes occurring outside thc scope of this agrecment. Additionally, this agreement does not preclude the United States Attorney from pursuing any civil or administrativc matters against the Defendant, including, but not limited to, civil tax matters and civil forfeiture which arise from, or are related to, the facts upon which this investigation is based. This plea agreement binds only the parties hereto. It does not bind any prosecuting authority other than the United States Attorney for the Southern District of Iowa.

19. Forfeitures. The Defendant hereby consents to the forfeiture of merchandise previously seized by the U.S. Immigration Customs Enforcement as bcing imported or exported by Rigel Optics, Inc., and the Defendant agrees to execute separately prepared Notice of Abandonmcnt and Assent to Forfeiture (Customs Form 4607) in order to accomplish the forfeitures pursuant to 22 C.F.R. Section 127.6 and 27 C.F.R. Section 447.63.

20. Entire Agreement. This plea agreement, and any attachments, constitute the entire agreement between the parties. No other promises of any kind, express or implied, have been made to the Defendant by the United States or by its agents.

21. Venue. Defendant agrces that the offense conduct relating to the subject offenses were committed, in whole or in part, in the Southern District of Iowa, and that the U. S. District Court, Southern District of Iowa, has proper venue of this agrecment.

22. Public Interest. The United States Attorney and Defcndant state this plea

agreement is in the public interest and it takes into account the benefit to the public of a prompt and certain disposition of the case and furnishes adequate protection to the public interest and is in keeping with the gravity of the offense and promotes respect for the law.

23. Execution/Effective Date. This Plea Agreement does not become valid and binding until executed by each of the individuals (or their designated representatives).

The undersigned hereby accept and agree to the terms and conditions set forth in this Plea Agreement.

7/31/08
Date

DONALD WAYNE HATCH, President
Rigel Optics, Inc.

7/31/08
Date

Mark Weinhardt
Attorney for Defendant
666 Walnut Street
Suite 200
Des Moines, IA 50309-3989

Matthew G. Whitaker
United States Attorney

By:

Kevin E. VanderSchel
Assistant United States Attorney
U. S. Courthouse Annex, 2nd Floor
110 E. Court Avenue
Des Moines, Iowa 50309
Tel: (515) 473-9300
Fax: (515) 473-9288
Email: kevin.vanderschel@usdoj.gov