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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

DANIEL G. BOGDEN
United States Attorney

DANIEL J. COWHIG
Assistant United States Attorney
Office of the United States Attorney
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336/Fax: (702) 388-6020

MATTHEW A. LAMBERTI
Senior Counsel
Computer Crime and Intellectual Property Section
United States Department of Justice
1301 New York Avenue, NW, Suite 600
Washington, DC 20530
(202) 514-1026/Fax (202) 514-6113

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DMITRIY V. MELNIK,
a/k/a Dmitry Melnik,
a/k/a Dimitri Melnik,

Defendant.

Case No.: 2:16-cr-00033-JCM-GWF

**PLEA AGREEMENT UNDER
FED. R. CRIM. P. 11 (c)(1)(A) and (B)**

Plaintiff United States of America, by and through Daniel G. Bogden, United States Attorney, Daniel J. Cowhig, Assistant United States Attorney, Matthew A. Lamberti, Senior Counsel, defendant Dmitriy V. Melnik, and the defendant's attorney, Kenneth M. Roberts, submit this Plea Agreement under Rules 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure.

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I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and the defendant Dmitriy V. Melnik. This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other prosecuting, administrative, or regulatory authority, the United States Probation Office, or the Court.

The Plea Agreement sets forth the parties' agreement regarding criminal charges referenced in the Plea Agreement and applicable sentences, fines, restitution and forfeiture. It does not control or prohibit the United States or any agency or third party from seeking any other civil or administrative remedies directly or indirectly against the defendant.

II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS

A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to Count One of the Indictment charging him with Conspiracy to Traffic in Counterfeit Goods and to Introduce into Interstate Commerce Misbranded Devices, in violation of 18 U.S.C. § 371.

The defendant also agrees to the forfeiture of the property, the imposition of the forfeiture on the property, and the imposition of the in personam criminal forfeiture money judgment as set forth in the Plea Agreement and the Forfeiture Allegation of the Indictment.

B. Waiver of Trial Rights. The defendant acknowledges that he has been advised and understands that by entering a plea of guilty he is waiving—that is, giving up—certain rights guaranteed to all defendants by the laws and the Constitution of the United States. Specifically, the defendant is giving up:

1. The right to proceed to trial by jury on all charges, or to a trial by a judge if the defendant and the United States both agree;

2. The right to confront the witnesses against the defendant at such a trial, and to cross-examine them;

1 3. The right to remain silent at such a trial, with assurance that his silence could
2 not be used against him in any way;

3 4. The right to testify in his own defense at such a trial if he so chooses;

4 5. The right to compel witnesses to appear at such a trial and testify in the
5 defendant's behalf; and

6 6. The right to have the assistance of an attorney at all stages of such
7 proceedings.

8 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw his guilty plea
9 after he has entered it in court.

10 D. Additional Charges. The United States agrees not to bring any additional charges
11 against the defendant arising out of the investigation in the District of Nevada which culminated in
12 this Plea Agreement and based on conduct known to the United States, except that the United States
13 reserves the right to prosecute the defendant for any crime of violence as defined by 18 U.S.C. § 16.

14 **III. ELEMENTS OF THE OFFENSES**

15 A. The elements of Conspiracy to Traffic in Counterfeit Goods and to Introduce into
16 Interstate Commerce Misbranded Devices, in violation of 18 U.S.C. § 371, as set forth in Count One
17 are:

18 1. There was an agreement between two or more persons to traffic in counterfeit
19 goods in violation of 18 U.S.C. § 2320(a)(1), and to introduce into interstate commerce misbranded
20 devices in violation of 21 U.S.C. §§ 331(a) and 333(a)(2).

21 2. The defendant became a member of the conspiracy knowing of at least one of
22 its objects and intending to help accomplish it; and

23 3. One of the members of the conspiracy performed at least one overt act for the
24 purpose of carrying out the conspiracy.

1 B. The elements of trafficking in counterfeit goods in violation of 18 U.S.C.
2 § 2320(a)(1) are:

3 1. The defendant intentionally trafficked or attempted to traffic in goods, in this
4 case, Ciba Vision FreshLook COLORBLEND contact lenses; and

5 2. On or in connection with those goods, the defendant knowingly used a
6 counterfeit mark, in this case, one of the following three marks:

7 (a) Number 2,888,957 (“the ‘957 Mark”), “FRESHLOOK,” for use in
8 connection with contact lenses;

9 (b) Number 2,340,808 (“the ‘808 Mark”), “COLORBLEND,” for use in
10 connection with contact lenses; and

11 (c) Number 3,429,280 (“the ‘280 Mark”), “CIBA VISION,” for use in
12 connection with contact lenses.

13 C. The elements of introducing into interstate commerce misbranded devices in violation
14 of 21 U.S.C. §§ 331(a) and 333(a)(2) are:

15 1. The defendant, with intent to defraud or mislead;

16 2. Introduced or caused to be introduced, or delivered or caused delivery for
17 introduction, into interstate commerce devices, in this case, contact lenses;

18 3. That were misbranded in one of the following ways:

19 (a) their labeling was false or misleading;

20 (b) they were manufactured, prepared, propagated, compounded, or
21 processed in establishments not registered with the Food and Drug Administration (“FDA”);

22 (c) they were not on the list required to be filed with the FDA by
23 registered establishments;

24 ...

1 (d) they were not covered by notices and information required to be
2 provided to the FDA by registered establishments;

3 (e) their labeling did not bear adequate directions for use; or

4 (f) their labeling did not bear adequate warnings against unsafe methods
5 and duration of administration and application, in such manner and form, as are necessary for the
6 protection of users.

7 *See* Title 18, United States Code, Section 371.

8 **IV. FACTS SUPPORTING GUILTY PLEA**

9 A. The defendant will plead guilty because he is, in fact and under the law, guilty of the
10 crimes charged.

11 B. The defendant acknowledges that if he elected to go to trial instead of pleading guilty,
12 the United States could prove his guilt beyond a reasonable doubt. The defendant further
13 acknowledges that his admissions and declarations of fact set forth below satisfy every element of
14 the charged offenses.

15 C. The defendant waives any potential future claim that the facts he admitted in this Plea
16 Agreement were insufficient to satisfy the elements of the charged offenses.

17 D. The defendant admits and declares under penalty of perjury that the facts set forth
18 below are true and correct:

19 1. At all times material to this Indictment, Dmitriy V. Melnik was the owner and
20 operator of Candy Color Lenses, a business involving the importation and sale of colored contact
21 lenses that was operated over the internet through www.candycolorlenses.com.

22 2. From in or about February 2011 to on or about August 21, 2013, Melnik
23 knowingly bought and imported thousands of colored contact lenses from various suppliers in China,
24 South Korea, and Taiwan that were counterfeit or otherwise misbranded.

1 3. First, Melnik bought and imported counterfeit Ciba Vision FreshLook
2 COLORBLEND S from a company in China listed as Supplier 2 in the indictment, and then sold
3 them to customers in the United States. Genuine Ciba Vision FreshLook COLORBLEND S are
4 manufactured by Ciba Vision Inc. ("Ciba Vision"), which is part of Alcon, a wholly owned
5 subsidiary of Novartis International AG ("Novartis"). Ciba Vision manufactured FreshLook
6 COLORBLEND S at a facility in Batam, Indonesia.

7 4. In buying and importing counterfeit Ciba Vision FreshLook
8 COLORBLEND S, Melnik ordered them from different manufacturers in China and asked for
9 assurances that the contact lenses were good quality and that the packaging would look "correct."
10 He also occasionally traveled to China and purchased Ciba Vision FreshLook COLORBLEND S and
11 other contact lenses for even lower prices.

12 5. Second, Melnik bought and imported "Cool" contact lenses from two
13 different companies in China, one listed as Supplier 2 in the indictment and one listed as Supplier 4,
14 and then sold them to customers in the United States. Cool is manufactured by T.C. Science Co.
15 Ltd. ("T.C. Science"), a company in South Korea. T.C. Science was not a registered establishment
16 with the FDA, and there were no FDA approvals for T.C. Science or Cool. In addition, neither
17 Supplier 2 nor Supplier 4 was a registered establishment with the FDA, and there were no FDA
18 approvals associated with Supplier 2 or Supplier 4.

19 6. Third, Melnik bought and imported "Jessica" lenses from a company in South
20 Korea listed as Supplier 1 in the indictment, and then sold them to customers in the United States.
21 Supplier 1 was not a registered establishment with the FDA, and there were no FDA approvals
22 associated with Supplier 1 or Jessica.

23 7. Fourth, Melnik bought and imported "Crazy" lenses from a company in China
24 listed as Supplier 3 in the indictment, and then sold them to customers in the United States. Supplier

1 3 was not a registered establishment with the FDA, and there were no FDA approvals associated
2 with Supplier 3 or Crazy.

3 8. Fifth, Melnik bought and imported "ViviGo" lenses from the company listed
4 as Supplier 2 in the indictment, and sold them to customers in the United States. As noted above,
5 Supplier 2 was not a registered establishment with the FDA, and there were no FDA approvals
6 associated with Supplier 2. There were also no FDA approvals associated with ViviGo.

7 9. The counterfeit and unauthorized contact lenses Melnik purchased and
8 imported into the United States came from suppliers and manufacturers from outside the United
9 States. Melnik provided specific instructions to these companies regarding quantity, type, and color
10 of the contact lenses he ordered, and even sometimes the quality and packaging. Moreover, to pay
11 for these contact lenses, he wired large sums of money to his overseas suppliers. As a result, a
12 substantial part of fraudulent scheme was committed from outside the United States.

13 10. After buying and importing counterfeit and unauthorized contact lenses,
14 Melnik marketed his contact lenses as authentic and also told his customers that. In fact, he knew
15 that the contact lenses he sold were not authentic and/or not cleared, authorized, or approved for
16 import into and sale in the United States. Moreover, Melnik received numerous questions and
17 complaints regarding the contact lenses from prospective and actual customers. Some individuals
18 asked him if the contact lenses that they wanted to purchase or did purchase were authentic or
19 approved by the FDA. Melnik would typically respond that the contact lenses were authentic or not
20 answer the specific question asked.

21 11. Melnik and his co-conspirators communicated by electronic mail and other
22 means regarding orders, purchases, and deliveries of contact lenses and regarding international wire
23 payments for those contact lenses. While Melnik purchased counterfeit and unauthorized contact
24 lenses for just a few dollars a pair, he charged customers a retail price that was substantially more.

1 In fact, Melnik generally charged more per pair of counterfeit Ciba Vision FreshLook
2 COLORBLENDs than Novartis' manufacturer's suggested retail price ("MSRP") for the genuine
3 product.

4 12. Contact lenses are medical devices, and soft contact lenses intended for daily
5 wear only are Class II medical devices. The FDA requires numerous general and special controls
6 for such devices to provide a reasonable assurance of safety and effectiveness. Since 2006, the FDA
7 has stated that all contact lenses—even decorative ones—should not be marketed or made available
8 to consumers by manufacturers, importers, distributors, or retailers as an over-the-counter item, and
9 should only worn with a valid prescription, fitting, supervision, and regular check-ups by a qualified
10 eye care professional. The FDA has warned consumers to only buy contact lenses from a company
11 that sells FDA-cleared or approved contact lenses and that require a prescription.

12 13. In fact, none of the companies in Asia from which Melnik purchased Cool,
13 Jessica, ViviGo, Crazy, or counterfeit Ciba Vision FreshLook COLORBLENDs contact lenses—or
14 that manufactured these contact lenses—was registered with the FDA or had provided to the FDA
15 any of the required forms, notices, and information necessary to import contact lenses into or sell
16 them in the United States. And the same is true for the specific brands that Melnik imported: Cool,
17 Jessica, ViviGo, and Crazy. In short, the contact lenses that Melnik is charged with importing and
18 selling lacked any FDA clearance, authorization, or approval.

19 14. In addition, the packaging for the counterfeit Ciba Vision FreshLook
20 COLORBLENDs that Melnik imported and sold did not include all the required FDA instructions
21 and warnings, and Melnik's contact lenses were not distributed by a licensed practitioner who could
22 provide this information to the customer. In fact, while Melnik knew that he was required to sell
23 contacts to customers only after they had visited an eye doctor and presented him with a
24 prescription, he sold contact lenses without a prescription and without proof that the customer had

1 visited a licensed practitioner. As a result, customers were not given adequate directions for use or
2 adequate warnings. Indeed, a number of customers asked questions about how to wear the contacts
3 and if they were safe, but Melnik was not qualified to provide answers to these questions and did not
4 do so.

5 15. Similarly, the packaging of the Jessica, Cool, ViviGo, and Crazy contact
6 lenses did not include required FDA instructions and warnings. And, again, Melnik sold the
7 contacts without a prescription or the FDA's required instructions and warnings. So, with regard to
8 Jessica, Cool, ViviGo, and Crazy contact lenses—as with the counterfeit Ciba Vision FreshLook
9 COLORBLENDS—customers did not receive adequate directions for use or adequate warnings.

10 16. Melnik knew that the contact lenses he bought and imported were
11 misbranded. In fact, Melnik was told by some of his suppliers and potential suppliers he contacted
12 that they were not authorized by the FDA to import and sell contact lenses in the United States.
13 Even after being repeatedly told by one South Korean supplier that their contact lenses were not
14 authorized by the FDA, Melnik asked if he could be the company's exclusive distributor in the
15 United States and continued to buy contact lenses from them. And he kept on buying and importing
16 unauthorized contact lenses even after U.S. Customs and Border Protection ("CBP") notified him
17 that they had seized a shipment of contact lenses to him from South Korea because of no "FDA
18 permit." In fact, shortly after this seizure, Melnik opened two post office boxes, and he requested
19 suppliers in China and South Korea to help him avoid CBP scrutiny by undervaluing the shipments
20 and sending them in different packages to different addresses—including the P.O. Boxes—on
21 different days. Moreover, if customs officers rejected unauthorized contact lens shipments to the
22 United States and returned them, Melnik and his co-conspirators would cause the shipments to be
23 resent to the United States, where the contact lenses would then be sold to U.S. customers.

24 ...

1 17. Melnik imported into and sold contact lenses in the United States that were
2 counterfeit, substandard, and low quality. Such contact lenses had the potentiality of harmful effect.
3 Indeed, numerous customers complained about the contact lenses that they or their children
4 purchased were unsafe or poor quality. Melnik typically refused to replace the contact lenses or
5 offer a refund if the contact lenses had been opened or the request came more than a few days after
6 the purchase.

7 18. According to the FDA, wearing unauthorized contact lenses can cause a
8 variety of serious injuries and conditions including scratches on the cornea, corneal infection,
9 conjunctivitis, decreased vision, allergic reactions, infections, and blindness. In fact, a test of a
10 sample of contact lenses purchased from Melnik found that one pair was contaminated with the
11 *Ochrobactrum anthropi* bacterium, a potential human pathogen that could cause severe symptoms in
12 humans, particularly those with an underlying medical condition. Under certain conditions, this
13 bacterium could cause an infection resulting in death. As a result, the offense involved the
14 conscious or reckless risk of death or serious bodily injury.

15 19. Melnik conspired with others to traffic in counterfeit goods, in violation of 18
16 U.S.C. § 2320(a)(1), and, with intent to defraud and mislead, introduce into interstate commerce
17 misbranded devices, in violation of 21 U.S.C. §§ 331(a) and 333(a)(2). The conspiracy had the
18 following purpose and objects, among others: to make money by importing counterfeit and
19 misbranded devices, namely, Ciba Vision FreshLook COLORBLENDS, Cool, Jessica, ViviGo,
20 Crazy, and other contact lenses in the United States; avoiding detection and seizure of the illegal
21 contact lenses by CBP; and after receipt of the counterfeit and unauthorized contact lenses,
22 unlawfully selling them as “authentic” to customers located throughout the United States.

23 ...

24 ...

1 20. Specifically, Melnik conspired to traffic in counterfeit goods, namely, Ciba
2 Vision FreshLook COLORBLEND contact lenses. On or in connection with those goods, he
3 knowingly used counterfeit Novartis marks, including the following three registered marks:

4 a. Number 2,888,957 (“the ‘957 Mark”), “FRESHLOOK,” for use in
5 connection with contact lenses;

6 b. Number 2,340,808 (“the ‘808 Mark”), “COLORBLEND,” for use in
7 connection with contact lenses; and

8 c. Number 3,429,280 (“the ‘280 Mark”), “CIBA VISION,” for use in
9 connection with contact lenses

10 21. In that regard, he used spurious—that is, false or inauthentic—marks on or in
11 connection with contact lenses in which he trafficked, and these marks were identical with or
12 substantially indistinguishable from marks in use and registered for contact lenses on the principal
13 register in the United States Patent and Trademark Office. The use of these counterfeit marks was
14 likely to cause confusion, cause mistake, or to deceive.

15 22. In conspiring to traffic in counterfeit goods, Melnik entered into agreements
16 with Supplier 2 in China to buy counterfeit contact lenses wholesale and then import them into the
17 United States for retail sale from his website and elsewhere. Subsequently, Melnik fulfilled this
18 agreement by wiring payment to Supplier 2. His orders and payments for, and sales of, counterfeit
19 contact lenses were overt acts that he performed for the purpose of carrying out the conspiracy.
20 Some of these overt acts are specifically set forth in Count One of the indictment and others are
21 further described in this Plea Agreement. These overt acts were committed by Melnik in furtherance
22 of the conspiracy and to effect the objects thereof.

23 23. In addition, with intent to defraud and mislead, Melnik conspired to introduce
24 into interstate commerce misbranded devices, namely, contact lenses that were not authorized for

1 import into and sale in the United States. These contact lenses included counterfeit Ciba Vision
2 FreshLook COLORBLENDs as well as Cool, Jessica, and Crazy contact lenses. The devices were
3 misbranded because (a) their labeling was false or misleading, (b) they were manufactured,
4 prepared, propagated, compounded, or processed in establishments not registered with the FDA, (c)
5 they were not on list required to be filed with the FDA by registered establishments, (d) they were
6 not covered by notices and information required to be provided to the FDA by registered
7 establishments, (e) their labeling did not bear adequate directions for use, and (f) their labeling did
8 not bear adequate warnings against unsafe methods and duration of administration and application,
9 in such manner and form, as are necessary for the protection of users.

10 24. In conspiring to introduce into interstate commerce misbranded devices,
11 Melnik entered into agreements with suppliers in Asia to buy contact lenses wholesale and then
12 import them into the United States for retail sale from his website and elsewhere, even though he
13 knew that these contact lenses were not authorized by the FDA for import into and sale in the United
14 States. These suppliers include Supplier 1, Supplier 2, Supplier 3, and Supplier 4. The companies
15 that manufactured and exported the contact lenses to the United States were not registered with the
16 FDA and had not provided to the FDA any of the required forms, notices, and other information
17 necessary to import the contact lenses into the United States. Subsequently, Melnik fulfilled this
18 agreement by wiring payment to the suppliers of the contact lenses. His orders and payments for,
19 and sales of, counterfeit contact lenses were overt acts that he performed for the purpose of carrying
20 out the conspiracy. Some of these overt acts are specifically set forth in Count One of the
21 indictment and others are further described in this Plea Agreement. These overt acts were
22 committed by Melnik in furtherance of the conspiracy and to effect the objects thereof. In the
23 conspiracy, Melnik acted with intent to defraud and mislead by taking actions to evade government
24 ...

1 enforcement officials and regulators as well as by selling counterfeit and unauthorized contact lenses
2 to consumers.

3 25. Melnik and his co-conspirators stored, repackaged, proffered for sale, and
4 sold counterfeit and unauthorized contact lenses and contact lens solution at various locations
5 including www.candycolorlenses.com, 363 Solutions, Inc. ("363 Solutions"), LV Hangers, Inc.
6 ("LV Hangers"), and Shoes 4 Less, with contact lenses being distributed to retail customers
7 throughout the United States. Besides Candy Color Lenses, Melnik was also the owner and operator
8 of 363 Solutions, a business engaged in commercial cleaning services as well as importing and
9 selling contact lenses, and LV Hangers, a business engaged in the business of manufacturing,
10 including producing wire hangers, as well as storing contact lenses and preparing shipments of those
11 contact lenses to customers. 363 Solutions and LV Hangers were based in Las Vegas, Nevada. An
12 individual related to Melnik was the owner and operator of Shoes 4 Less, a business engaged in
13 selling shoes, clothing, contact lenses, and other items. Shoes 4 Less was based in Henderson,
14 Nevada.

15 26. On August 21, 2013, federal agents executed search warrants at four locations
16 involved in the illegal operation including the businesses addresses for 363 Solutions, LV Hangers,
17 and Shoes 4 Less. Among other items, they seized approximately 11,040 single contacts (plus other
18 contacts in sealed envelopes) from multiple manufacturers with different trademarks including Ciba
19 Vision FreshLook COLORBLENDs with a retail value of around \$55,200. Agents also seized
20 \$57,709.28 from bank accounts, merchant accounts, and safety deposit boxes.

21 27. From in or about February 2011 through August 21, 2013, Melnik sold
22 counterfeit and unauthorized contact lenses from his website to tens of thousands of customers
23 throughout the United States, receiving at least \$1.2 million in gross revenue. Approximately
24 \$200,000 was received from the sale of counterfeit Ciba Vision FreshLook COLORBLENDs.

1 28. Melnik admits that (a) a loss amount of more than \$550,000 but not more than
2 \$1,500,000 is attributable to the defendant for the conspiracy; (b) the offense involved 10 or more
3 victims; (c) a substantial part of the fraudulent scheme was committed from outside the United
4 States; and (d) the offense involved the conscious or reckless risk of death or serious bodily injury.

5 29. Melnik also admits that the property and the in personam criminal forfeiture
6 money judgment amount listed in Section X is (1) any article, the making or trafficking of which is,
7 prohibited under 18 U.S.C. §§ 371 and 2320(a)(1); (2) any property used, or intended to be used, in
8 any manner or part to commit or facilitate the commission of 18 U.S.C. §§ 371 and 2320(a)(1); and
9 (3) any property constituting or derived from any proceeds obtained directly or indirectly as a result
10 of the commission of 18 U.S.C. §§ 371 and 2320(a)(1), and is subject to forfeiture pursuant to 18
11 U.S.C. § 2323(b); 18 U.S.C. § 2323(a)(1) with 28 U.S.C. § 2461(c); and 21 U.S.C. § 853(p).

12 30. Melnik further admits that, directly or indirectly as a result of his criminal
13 violations, he owes Novartis restitution in the amount of at least \$200,000.

14 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

15 The facts set forth in Section IV of this Plea Agreement shall be admissible against the
16 defendant under Rule 801(d)(2)(A) of the Federal Rules of Evidence at sentencing for any purpose.
17 If the defendant does not plead guilty or withdraws his guilty plea, the facts set forth in Section IV of
18 this Plea Agreement shall be admissible at any proceeding, including a trial, for impeaching or
19 rebutting any evidence, argument or representation offered by or on the defendant's behalf. The
20 defendant expressly waives all rights under Rule 11(f) of the Federal Rules of Criminal Procedure
21 and Rule 410 of the Federal Rules of Evidence regarding the use of the facts set forth in Section IV
22 of this Plea Agreement.

23 ...

24 ...

VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS

A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges that the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines") in determining the defendant's sentence, but that the Sentencing Guidelines are advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the maximum term of imprisonment permitted by statute.

B. Offense Level Calculations. The parties stipulate to the following calculation of the defendant's offense level under the Sentencing Guidelines, acknowledge that these stipulations do not bind the Court, and agree that they will not seek to apply any other specific offense characteristics, enhancements or reductions:

Count One, Conspiracy to Traffic in Counterfeit Goods and to Introduce into Interstate Commerce Misbranded Devices

Base Offense Level (USSG § 2N2.1(a)):	6
Offense involved fraud (USSG § 2N2.1(c)(1)):	
Loss exceeds \$550,000 (USSG § 2B1.1(b)(1)(H))	14
10 or more victims (USSG § 2B1.1(b)(2)(A)(i))	2
Substantial part of fraudulent scheme committed from outside the United States (USSG § 2B1.1(b)(10)(B))	2
Conscious or reckless risk of death or serious bodily injury (USSG § 2B1.1(b)(15)(A))	2
Adjusted Offense Level	<u>26</u>
Acceptance of Responsibility (USSG § 3E1.1(a))	- 2
Upon Motion of the Government (USSG § 3E1.1(b))	<u>- 1</u>
Total Offense Level	23

...

1 C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG
2 § 3E1.1(a), the United States will recommend that the defendant receive a two-level downward
3 adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing a
4 factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts establishing
5 the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully admit facts
6 establishing the forfeiture allegations when he enters his guilty plea; (d) provides false or misleading
7 information to the United States, the Court, Pretrial Services, or the Probation Office; (e) denies
8 involvement in the offense or provides conflicting statements regarding his involvement or falsely
9 denies or frivolously contests conduct relevant to the offense; (f) attempts to withdraw his guilty
10 plea; (g) commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates the
11 conditions of pretrial release.

12 Under USSG § 3E1.1(b), the United States will move for an additional one-level downward
13 adjustment for acceptance of responsibility before sentencing because the defendant communicated
14 his decision to plead guilty in a timely manner that enabled the United States to avoid preparing for
15 trial and to efficiently allocate its resources.

16 These Sentencing Guidelines provisions, if applied, will result in a total offense level of 24
17 (if two-level adjustment applies) or 23 (if the two-level adjustment and additional one-level
18 adjustment both apply).

19 D. Criminal History Category. The defendant acknowledges that the Court may base his
20 sentence in part on the defendant's criminal record or criminal history. The Court will determine the
21 defendant's Criminal History Category under the Sentencing Guidelines.

22 E. Relevant Conduct. The Court may consider all other relevant conduct, whether
23 charged or uncharged, in determining the applicable Sentencing Guidelines range and whether to
24 depart from that range.

1 F. Additional Sentencing Information. The stipulated Sentencing Guidelines
2 calculations are based on information now known to the parties. The parties may provide additional
3 information to the United States Probation Office and the Court regarding the nature, scope, and
4 extent of the defendant's criminal conduct and any aggravating or mitigating facts or circumstances.
5 Good faith efforts to provide truthful information or to correct factual misstatements shall not be
6 grounds for the defendant to withdraw his guilty plea.

7 The defendant acknowledges that the United States Probation Office may calculate the
8 Sentencing Guidelines differently and may rely on additional information it obtains through its
9 investigation. The defendant also acknowledges that the Court may rely on this and other additional
10 information as it calculates the Sentencing Guidelines range and makes other sentencing
11 determinations, and the Court's reliance on such information shall not be grounds for the defendant
12 to withdraw his guilty plea.

13 VII. APPLICATION OF SENTENCING STATUTES

14 A. Maximum Penalty. The maximum penalty for violating 18 U.S.C. § 371, Conspiracy
15 to Traffic in Counterfeit Goods and to Introduce into Interstate Commerce Misbranded Devices, is
16 five years imprisonment, three years supervised release, and a fine of \$250,000 or twice the gross
17 gain or loss.

18 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in 18
19 U.S.C. § 3553(a) in determining the defendant's sentence. However, the statutory maximum
20 sentence and any statutory minimum sentence limit the Court's discretion in determining the
21 defendant's sentence.

22 C. Parole Abolished. The defendant acknowledges that his prison sentence cannot be
23 shortened by early release on parole because parole has been abolished.

24 ...

1 D. Supervised Release. In addition to imprisonment and a fine, the defendant will be
2 subject to a term of supervised release not to exceed three years. 18 U.S.C. § 3583(b). Supervised
3 release is a period of time after release from prison during which the defendant will be subject to
4 various restrictions and requirements. If the defendant violates any condition of supervised release,
5 the Court may order the defendant's return to prison for all or part of the term of supervised release,
6 which could result in the defendant serving a total term of imprisonment greater than the statutory
7 maximum prison sentence of five years.

8 E. Special Assessment. The defendant will pay a \$100.00 special assessment per count
9 at the time of sentencing, for a total of \$100.00.

10 **VIII. POSITIONS REGARDING SENTENCE**

11 The United States may argue for any sentence within the Sentencing Guidelines range
12 corresponding to the offense level agreed upon by the parties in Section VI(B) above unless the
13 defendant commits any act that could result in a loss of the downward adjustment for acceptance of
14 responsibility. The defendant may request a sentence below the Sentencing Guidelines range
15 determined by the court pursuant to 18 U.S.C. § 3553 from any sentence the Court may impose, and
16 the United States may oppose it.

17 The defendant acknowledges that the Court does not have to follow this recommendation.
18 The defendant also acknowledges that the Court does not have to grant a downward departure based
19 on the defendant's substantial assistance to the United States, even if the United States chooses to
20 file a motion pursuant to 18 U.S.C. § 3553(e)(1), USSG § 5K1.1, or Rule 35 of the Federal Rules of
21 Criminal Procedure. This Plea Agreement does not require that the United States file any pre- or
22 post-sentence downward departure motion under USSG § 5K1.1 or Rule 35 of the Federal Rules of
23 Criminal Procedure. In addition, notwithstanding the agreement to recommend a sentence within
24 the Sentencing Guidelines range corresponding to the offense level calculated in this Plea

1 Agreement, the United States reserves its right to defend any lawfully imposed sentence on appeal or
2 in any post-conviction litigation.

3 **IX. RESTITUTION**

4 In exchange for benefits received under this Plea Agreement, the defendant agrees to make
5 full restitution in the amount to be determined by the Court, to include all the losses the defendant
6 caused by his participation in schemes and offenses, whether charged or uncharged, pled to or not,
7 and by all of his relevant conduct. 18 U.S.C. § 3663(a)(3). Both the United States and the
8 defendant agree that the amount of restitution to be paid to Novartis shall not be less than \$200,000.
9 The defendant cannot discharge his restitution obligation through bankruptcy proceedings. The
10 defendant acknowledges that restitution payments and obligations cannot offset or reduce the
11 amount of any forfeiture judgment imposed in this case.

12 **X. FORFEITURE**

13 The defendant knowingly and voluntarily:

14 A. Agrees to the District Court imposing the civil judicial forfeiture or the criminal
15 forfeiture of:

- 16 1. 908 boxes (each containing two foils) and 45 single foils of contact lenses
17 labeled as manufactured by Ciba Vision with the brand name FreshLook COLORBLEND, and
18 seized on or about August 21, 2103;
- 19 2. 1627 boxes (each containing two foils) and 23 single foils of contact lenses
20 labeled as manufactured by Cool with the brand name Cosmetic Tornado B, and seized on or about
21 August 21, 2013;
- 22 3. 282 boxes (each containing two foils) of contact lenses labeled as
23 manufactured by Innova Vision with the brand name ColorMaker, and seized on or about August 21,
24 2013;

1 4. 233 boxes (each containing two foils) of contact lenses labeled as
2 manufactured by Innova Vision with the brand name ColorNova, and seized on or about August 21,
3 2013;

4 5. 45 boxes (each containing two foils) of contact lenses labeled as
5 manufactured by Innova Vision with the brand name Magic, and seized on or about August 21,
6 2013;

7 6. 30 boxes (each containing two foils) of contact lenses labeled as
8 manufactured by Innova Vision with the brand name Dragon Gold, and seized on or about August
9 21, 2013;

10 7. 62 foils of contact lenses labeled as manufactured by Innova Vision with the
11 brand name Picasso, and seized on or about August 21, 2013;

12 8. 155 boxes (each containing two foils) of contact lenses labeled as
13 manufactured by Hana Korea, Inc. or Viewell, Inc. with the brand name Jessica, and seized on or
14 about August 21, 2013;

15 9. 4044 miscellaneous unboxed vials containing contact lenses labeled as
16 manufactured by different companies and with different brand names, including but not limited to
17 Cool, Jessica, Vassen ViviGo, Magic, Cherry Gold, Crazy Smile, Pink Cat, Dead White, Yellow
18 Cat, Magic, and Red Hot, and seized on or about August 21, 2013;

19 10. 6 bottles of contact lens solution labeled as manufactured by Ciba Vision with
20 the brand name FreshLook, and seized on or about August 21, 2013;

21 11. Five yellow sealed envelopes bearing return address Candy Ship Dep, PO Box
22 778002, Henderson, NV 89052 and stamps.com number xxxxxxxxxxx4045, seized on or about
23 August 21, 2013;

24 ...

1 12. \$19,000 in cash in Safety Deposit Box 1004 at US Bank, 4550 E. Sunset Rd.,
2 Henderson, NV, seized on or about August 23, 2013;

3 13. \$12,204.02 in cash in Intuit account number xxxxxxxx4513, seized on or
4 about September 16, 2013;

5 14. \$10,242.50 in cash in Citibank account number xxxxxxxx0481, seized on or
6 about September 13, 2013;

7 15. \$7,000.63 in cash in Citibank account number xxxxxxxx6513, seized on or
8 about September 12, 2013;

9 16. \$2,384.37 in cash in Citibank account number xxxxxxxx6497, seized on or
10 about September 12, 2013;

11 17. \$1,000 in cash in Safety Deposit Box 263 at Citibank, 495 E. Silverado Ranch
12 Blvd., Las Vegas, NV, seized on or about August 23, 2013; and

13 18. \$877.76 in cash in Intuit account number xxxxxxxxxxxx6508, seized on or
14 about September 16, 2013 (all of which constitutes "property").

15 B. Agrees to the District Court imposing an in personam criminal forfeiture money
16 judgment of \$1,147,290.72, and that the property will not be applied toward the payment of the
17 money judgment;

18 C. Agrees to the abandonment, the civil administrative forfeiture, the civil judicial
19 forfeiture, or the criminal forfeiture of the property;

20 D. Abandons or forfeits the property to the United States;

21 E. Relinquishes all right, title, and interest in the property;

22 F. Waives his right to any abandonment proceedings, any civil administrative forfeiture
23 proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture proceedings of the
24 property and the in personam criminal forfeiture money judgment ("proceedings");

1 G. Waives service of process of any and all documents filed in this action or any
2 proceedings concerning the property and the in personam criminal forfeiture money judgment
3 arising from the facts and circumstances of this case;

4 H. Waives any further notice to him, his agents, or his attorney regarding the
5 abandonment or the forfeiture and disposition of the property;

6 I. Agrees not to file any claim, answer, petition, or other documents in any proceedings
7 concerning the property and the in personam criminal forfeiture money judgment;

8 J. Waives the statute of limitations; the CAFRA requirements; Rules 7, 11, and 32.2 of
9 the Federal Rules of Criminal Procedure; all constitutional requirements, including, but not limited
10 to, the constitutional due process requirements of any proceedings concerning the property and the
11 in personam criminal forfeiture money judgment;

12 K. Waives his right to a jury trial on the forfeiture of the property;

13 L. Waives all constitutional, legal, and equitable defenses to the forfeiture or
14 abandonment of the property and the in personam criminal forfeiture money judgment in any
15 proceedings, including, but not limited to, (1) constitutional or statutory double jeopardy defenses
16 and (2) defenses under the Excessive Fines or Cruel and Unusual Punishments Clauses of the Eighth
17 Amendment to the United States Constitution;

18 M. Agrees to the entry of an Order of Forfeiture of the property and the in personam
19 criminal forfeiture money judgment to the United States;

20 N. Waives the right to appeal any Order of Forfeiture;

21 O. Agrees the property is forfeited to the United States;

22 P. Agrees that the in personam criminal forfeiture money judgment is immediately due
23 and payable and is subject to immediate collection by the United States;

24 ...

1 Q. Agrees and understands the abandonment, the civil administrative forfeiture, the civil
2 judicial forfeiture, or the criminal forfeiture of the property and the in personam criminal forfeiture
3 money judgment shall not be treated as satisfaction of any assessment, fine, restitution, cost of
4 imprisonment, or any other penalty the Court may impose upon the defendant in addition to the
5 abandonment or the forfeiture;

6 R. Acknowledges that the amount of the forfeiture may differ from, and may be
7 significantly greater than or less than, the amount of restitution; and

8 S. Agrees to take all steps as requested by the United States to pass clear title of the
9 property and of any forfeitable assets which may be used to satisfy the in personam criminal
10 forfeiture money judgment to the United States and to testify truthfully in any judicial forfeiture
11 proceedings. The defendant understands and agrees that the property and the in personam criminal
12 forfeiture money judgment amount represent proceeds and/or facilitating property of illegal conduct
13 and are forfeitable. The defendant acknowledges that failing to cooperate in full in either the
14 forfeiture of the property or the disclosure of assets constitutes a breach of this Plea Agreement.

15 **XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

16 Before or after sentencing, upon request by the Court, the United States, or the Probation
17 Office, the defendant will provide accurate and complete financial information, submit sworn
18 statements, and/or give depositions under oath concerning his assets and his ability to pay. The
19 defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and will
20 release funds and property under his control in order to pay any fine, forfeiture, or restitution ordered
21 by the Court.

22 **XII. COOPERATION**

23 A. The defendant agrees, if requested by the United States, to provide complete and
24 truthful information and testimony concerning the defendant's knowledge of all other persons who

1 are committing or have committed offenses against the United States or any state, and agrees to
2 cooperate fully with the United States and any state and local agencies in the investigation and
3 prosecution of such persons.

4 B. In the event the United States Attorney decides in the sole discretion of the United
5 States Attorney that the assistance provided by the defendant amounts to "substantial assistance"
6 pursuant to U.S.S.G. § 5K1.1, the United States will timely file a motion for downward departure
7 from the applicable Guideline and to sentence the defendant without regard to any mandatory
8 minimum sentence. The Court has the sole discretion to grant such a motion.

9 C. The defendant agrees that a motion for downward departure based on substantial
10 assistance shall not be made under any circumstances unless the defendant's cooperation is deemed
11 to be substantial assistance by the United States Attorney. The United States has made no promise,
12 implied or otherwise, that the defendant will be granted a departure for substantial assistance.
13 Further, no promise has been made that such a motion will be made even if the defendant complies
14 with the terms of this Plea Agreement in all respects but has been unable to provide substantial
15 assistance as determined in the sole discretion of the United States Attorney.

16 D. The United States agrees to consider the totality of the circumstances, including but
17 not limited to, the following factors, in determining whether, in the sole discretion of the United
18 States Attorney, the defendant has provided substantial assistance which would merit a motion by
19 the United States for a downward departure from the applicable Guideline:

20 1. The United States' evaluation of the significance and usefulness of the
21 defendant's assistance;

22 2. The truthfulness, completeness, and reliability of any information or
23 testimony provided by the defendant;

24 3. The nature and extent of the defendant's assistance;

1 4. Any injury suffered, or any danger or risk of injury to the defendant or the
2 defendant's family resulting from the defendant's assistance; and

3 5. The timeliness of the defendant's assistance.

4 E. The defendant agrees that in the event the United States files a downward
5 departure motion based upon the defendant's substantial assistance, the United States reserves the
6 right to make a specific recommendation to the Court regarding the extent of such a departure.
7 The defendant understands and agrees that the final decision as to how much of a departure, if any,
8 is warranted rests solely with the Court. The defendant agrees that if the United States determines
9 that the defendant has not provided full and truthful cooperation, or has committed any federal, state
10 or local crime between the date of this agreement and the defendant's sentencing, or has otherwise
11 violated any provision of this agreement, then (a) the agreement and any of its obligations hereunder
12 may be voided by the United States in its sole discretion, (b) the defendant may not withdraw the
13 guilty plea, and (c) the defendant shall be subject to prosecution for all federal criminal offenses of
14 which the United States has knowledge, including but not limited to, perjury and obstruction of
15 justice. Any such prosecution may be based upon any information provided by the defendant or
16 leads derived therefrom.

17 F. The defendant agrees to submit at the United States' request to any polygraph
18 examination concerning the defendant's statements to the United States. The defendant understands
19 that if any test indicates that the defendant is being untruthful as to any aspect of the defendant's
20 statements to the United States, the United States on the basis of the test alone may determine that
21 the defendant has not provided full and truthful cooperation and treat defendant and their agreement
22 in accordance with paragraph E above.

23 ...

24 ...

XIII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS

A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges that:

1. He has read this Plea Agreement and understands its terms and conditions;

2. He has had adequate time to discuss this case, the evidence, and this Plea Agreement with his attorney;

3. He has discussed the terms of this Plea Agreement with his attorney;

4. The representations contained in this Plea Agreement are true and correct, including the facts set forth in Section IV; and

5. He was not under the influence of any alcohol, drug, or medicine that would impair his ability to understand the Agreement when he considered signing this Plea Agreement and when he signed it.

The defendant understands that he alone decides whether to plead guilty or go to trial, and acknowledges that he has decided to enter his guilty plea knowing of the charges brought against him, his possible defenses, and the benefits and possible detriments of proceeding to trial. The defendant also acknowledges that he decided to plead guilty voluntarily and that no one coerced or threatened him to enter into this Plea Agreement.

B. Waiver of Appeal and Post-Conviction Proceedings. The defendant knowingly and expressly waives: (a) the right to appeal any sentence imposed within or below the applicable Sentencing Guideline range as determined by the Court; (b) the right to appeal the manner in which the Court determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of the conviction or sentence and any order of restitution or forfeiture.

The defendant also knowingly and expressly waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the Court ...

1 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of
2 counsel.

3 The defendant reserves only the right to appeal any portion of the sentence that is an upward
4 departure from the Sentencing Guidelines range determined by the Court.

5 The defendant acknowledges that the United States is not obligated or required to preserve
6 any evidence obtained in the investigation of this case.

7 C. Removal/Deportation Consequences. The defendant understands and acknowledges
8 that if he is not a United States citizen, then it is highly probable that he will be permanently
9 removed (deported) from the United States as a consequence of pleading guilty under the terms of
10 this Plea Agreement. The defendant has also been advised if his conviction is for an offense
11 described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the United States and
12 will not be allowed to return to the United States at any time in the future. The defendant desires to
13 plead guilty regardless of any immigration consequences that may result from his guilty plea, even if
14 the consequence is automatic removal from the United States with no possibility of returning. The
15 defendant acknowledges that he has specifically discussed these removal/deportation consequences
16 with his attorney.

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

XIV. ADDITIONAL ACKNOWLEDGMENTS

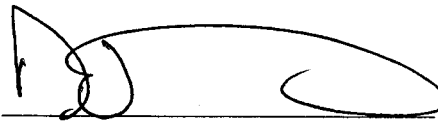
This Plea Agreement resulted from an arms-length negotiation in which both parties bargained for and received valuable benefits in exchange for valuable concessions. It constitutes the entire agreement negotiated and agreed to by the parties. No promises, agreements or conditions other than those set forth in this agreement have been made or implied by the defendant, the defendant's attorney, or the United States, and no additional promises, agreements or conditions shall have any force or effect unless set forth in writing and signed by all parties or confirmed on the record before the Court.

DANIEL G. BOGDEN,
United States Attorney



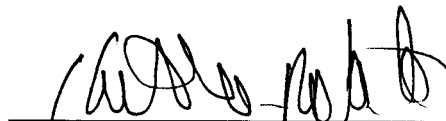
MATTHEW A. LAMBERTI
Senior Counsel—U.S. Department of Justice

DATE 9/8/16



DANIEL J. COWHIG
Assistant United States Attorney

DATE 7/8/16



KENNETH M. ROBERTS
Counsel for Defendant DMITRIY V. MELNIK

DATE 9/8/2016



DMITRIY V. MELNIK
Defendant

DATE 9/8/2016