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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICHOLAS GARDNER,

Defendant.

No. CR 2:22-cr-00147-SVW

PLEA AGREEMENT FOR DEFENDANT  
NICHOLAS GARDNER

1. This constitutes the plea agreement between defendant NICHOLAS GARDNER ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") in the investigation of alleged illegal kickbacks being provided by suppliers to executives of HCT Packaging, Inc. and the failure to file Reports of Foreign Bank and Financial Accounts. This agreement is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authority.

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2. Defendant agrees to:

a. Give up the right to indictment by a grand jury and agree to the filing of a two-count information in the form attached to this agreement as Exhibit A or a substantially similar form; and, at the earliest opportunity requested by the USAO and provided by the Court, appear and plead guilty to count two of the information, which charges defendant with Willful Failure to File Report of Foreign Bank and Financial Accounts, in violation of 31 U.S.C. §§ 5314, 5322(a), (b), 31 C.F.R. §§ 1010.350, 1010.306, 1010.840.

b. Not contest facts agreed to in this agreement.

c. Abide by all agreements regarding sentencing contained in this agreement.

d. Appear for all court appearances, surrender as ordered for service of sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter.

e. Not commit any crime; however, offenses that would be excluded for sentencing purposes under United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines") § 4A1.2(c) are not within the scope of this agreement.

f. Be truthful at all times with the United States Probation and Pretrial Services Office and the Court.

g. Pay the applicable special assessment at or before the time of sentencing unless defendant has demonstrated a lack of ability to pay such assessments.

h. Make restitution as ordered by the Court.

i. Prior to sentencing, disclaim and forfeit all interest in the approximately \$2,399,059.35 in assets attached in HCT Group

1 Holdings Limited et al. v. Nicholas Gardner et al., Case No. BC  
2 645615, in Los Angeles Superior Court, and to facilitate the sale  
3 and/or liquidation of these assets, except to the extent prohibited  
4 by any lawfully instituted lien or court order, with all interest and  
5 proceeds to be transferred to HCT Group Holdings, Limited. Defendant  
6 also agrees to disclaim, forfeit, and transfer by quitclaim deed to  
7 HCT all interest in the real property located at 980 N. Bundy Drive,  
8 Los Angeles, California 90049. Further, defendant agrees to transfer  
9 to HCT Group Holdings, Limited, by wire transfer the funds in the  
10 HSBC Hong Kong accounts ending in -833 and -838 owned or controlled  
11 by defendant, including but not limited to the \$609,915.74 frozen by  
12 the High Court of the Hong Kong Special Administrative Region (HCMP  
13 75 / 2017), except to the extent prohibited by any lawfully  
14 instituted lien or court order.

15 j. Not contest the right of HCT Group Holdings, Limited,  
16 its affiliated entities or individuals, or KDC/ONE, to provide victim  
17 impact statement(s) in writing or in open court in connection with  
18 defendant's sentencing proceedings.<sup>1</sup>

19 k. Defendant agrees that any and all criminal debt  
20 ordered by the Court will be due in full and immediately. The  
21 government is not precluded from pursuing, in excess of any payment  
22 schedule set by the Court, any and all available remedies by which to  
23 satisfy defendant's payment of the full financial obligation,  
24 including referral to the Treasury Offset Program.

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<sup>1</sup> In agreeing to paragraphs 2(i) and 2(j) of this agreement,  
defendant does not admit any liability to HCT Group Holdings,  
Limited, its affiliated entities or individuals, or KDC/ONE.

1           1.     Complete the Financial Disclosure Statement on a form  
2 provided by the USAO and, within 30 days of defendant's entry of a  
3 guilty plea, deliver the signed and dated statement, along with all  
4 of the documents requested therein, to the USAO by either email at  
5 usacac.FinLit@usdoj.gov (preferred) or mail to the USAO Financial  
6 Litigation Section at 300 North Los Angeles Street, Suite 7516, Los  
7 Angeles, CA 90012. Defendant agrees that defendant's ability to pay  
8 criminal debt shall be assessed based on the completed Financial  
9 Disclosure Statement and all required supporting documents, as well  
10 as other relevant information relating to ability to pay.

11           m.     Authorize the USAO to obtain a credit report upon  
12 returning a signed copy of this plea agreement.

13           n.     Consent to the USAO inspecting and copying all of  
14 defendant's financial documents and financial information held by the  
15 United States Probation and Pretrial Services Office.

16           o.     Agree that court appearances, including his initial  
17 appearance and change of plea hearing, but not his sentencing  
18 hearing, may proceed by video-teleconference ("VTC") or telephone, if  
19 VTC is not reasonably available, so long as such appearances are  
20 authorized by General Order 20-043 or another order, rule, or  
21 statute. Defendant understands that, under the Constitution, the  
22 United States Code, the Federal Rules of Criminal Procedure  
23 (including Rules 11, 32, and 43), he may have the right to be  
24 physically present at these hearings. Defendant understands that  
25 right. Defendant prefers that his change of plea hearing proceed in  
26 person, but after consulting with counsel, voluntarily agrees to  
27 waive his right to an in-person hearing and proceed remotely, if that  
28 is the Court's preference. Defense counsel also joins in this

1 consent, agreement, and waiver. Specifically, this agreement  
2 includes, but is not limited to, the following:

3 i. Defendant consents under Federal Rules of  
4 Criminal Procedure 5(f) and 10(c) and Section 15002(b) of the CARES  
5 Act to proceed with his initial appearance and arraignment by VTC or  
6 telephone, if VTC is not reasonably available.

7 ii. Defendant consents under Section 15002(b) of the  
8 CARES Act to proceed with his waiver of indictment, under Federal  
9 Rule of Criminal Procedure 7(b), by VTC or telephone, if VTC is not  
10 reasonably available.

11 iii. Defendant consents under Section 15002(b) of the  
12 CARES Act to proceed with his change of plea hearing by VTC or  
13 telephone, if VTC is not reasonably available.

14 p. Defendant understands that the government obtained  
15 additional material in this investigation that defendant has not been  
16 shown. In exchange for the government's obligations under this  
17 agreement, defendant gives up any right he may have had to review the  
18 additional material, regardless of whether it is arguably exculpatory  
19 or inculpatory. The government agrees not to use at sentencing any  
20 of the withheld material without providing it to defendant. The  
21 government will nevertheless provide to defendant any information  
22 material to the determination of guilt or punishment within the  
23 meaning of Brady v. Maryland, 373 U.S. 83 (1963), before the time of  
24 sentencing.

25 3. Defendant admits that defendant realized \$121,246 of  
26 unreported income in 2011, \$346,460 of unreported income in 2012,  
27 \$883,074 of unreported income in 2013, \$1,630,946 of unreported  
28 income in 2014, and \$2,281,595 in unreported income in 2015.

1 Defendant therefore owes \$1,757,811 to the Internal Revenue Service,  
2 which comprises the tax liabilities less payments made by defendant  
3 to date. Defendant agrees that:

4           a. Defendant will, if requested to do so by the Internal  
5 Revenue Service, provide the Internal Revenue Service with  
6 information regarding the years covered by the returns; will pay to  
7 the Internal Revenue Service all additional taxes and all penalties  
8 and interest assessed by the Internal Revenue Service on the basis of  
9 the returns; and will promptly pay to the Internal Revenue Service  
10 all additional taxes and all penalties and interest thereafter  
11 determined by the Internal Revenue Service to be owing as a result of  
12 any computational error(s). Payments may be made to IRS-RACS, ATTN:  
13 Mail Stop 6261, Restitution, 333 W. Pershing Ave., Kansas City, MO  
14 64108.

15           b. Nothing in this agreement forecloses or limits the  
16 ability of the Internal Revenue Service to examine and make  
17 adjustments to any amended returns defendant has filed or will file.

18           c. Defendant will not file any claim for refund of taxes,  
19 penalties, or interest for amounts attributable to the returns filed  
20 in connection with this plea agreement.

21           d. Defendant gives up any and all objections that could  
22 be asserted to the Examination Division of the Internal Revenue  
23 Service receiving materials or information obtained during the  
24 criminal investigation of this matter, including materials and  
25 information obtained through grand jury subpoenas.

26                                   THE USAO'S OBLIGATIONS

27           4. The USAO agrees to:

28           a. Not contest facts agreed to in this agreement.

1           b.    Abide by all agreements regarding sentencing contained  
2 in this agreement.

3           c.    At the time of sentencing, move to dismiss count one  
4 of the information as against defendant. Defendant agrees, however,  
5 that at the time of sentencing the Court may consider any facts and  
6 evidence supporting any dismissed charges in determining the  
7 applicable Sentencing Guidelines range, the propriety and extent of  
8 any departure from that range, and the sentence to be imposed.

9           d.    At the time of sentencing, provided that defendant  
10 demonstrates an acceptance of responsibility for the offense up to  
11 and including the time of sentencing, recommend a two-level reduction  
12 in the applicable Sentencing Guidelines offense level, pursuant to  
13 USSG § 3E1.1, and recommend and, if necessary, move for an additional  
14 one-level reduction if available under that section.

15           e.    Not further criminally prosecute defendant for  
16 violations of 18 U.S.C. §§ 1341, 1343, 1346, 1956, and 1957, or 26  
17 U.S.C. §§ 7201 or 7206 arising out of defendant's alleged conduct  
18 described in the proposed information attached as Exhibit A.  
19 Defendant understands that the USAO is free to criminally prosecute  
20 defendant for any other unlawful past conduct or any unlawful conduct  
21 that occurs after the date of this agreement. Defendant agrees that  
22 at the time of sentencing the Court may consider the uncharged  
23 conduct in determining the applicable Sentencing Guidelines range,  
24 the propriety and extent of any departure from that range, and the  
25 sentence to be imposed after consideration of the Sentencing  
26 Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).





1 based upon the count of conviction and any relevant conduct,  
2 including the alleged honest services wire fraud scheme described in  
3 the proposed information attached as Exhibit A.

4       8. Defendant agrees to make full restitution to the victim(s)  
5 of the offense to which defendant is pleading guilty. Defendant  
6 agrees that, in return for the USAO's compliance with its obligations  
7 under this agreement, the Court has the authority and may order  
8 restitution to persons other than the victim(s) of the offense to  
9 which defendant is pleading guilty and in amounts greater than those  
10 alleged in the count to which defendant is pleading guilty. In  
11 particular, defendant agrees that the Court has the authority and may  
12 order restitution to any victim of any of the following for any  
13 losses suffered by that victim as a result: (a) any relevant conduct,  
14 as defined in USSG § 1B1.3, in connection with the offense to which  
15 defendant is pleading guilty; and (b) any counts dismissed pursuant  
16 to this agreement as well as all relevant conduct, as defined in USSG  
17 § 1B1.3, in connection with those counts, including any losses  
18 suffered by victim(s), including HCT Group Holdings, Limited; its  
19 affiliated entities or individuals; or KDC/ONE, from the conspiracy  
20 to commit honest services wire fraud alleged in count one of the  
21 information.

22       9. Defendant agrees that any and all fines and/or restitution  
23 ordered by the Court will be due immediately. The government is not  
24 precluded from pursuing, in excess of any payment schedule set by the  
25 Court, any and all available remedies by which to satisfy defendant's  
26 payment of the full financial obligation, including referral to the  
27 Treasury Offset Program.

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

10           11. Defendant understands that, by pleading guilty, defendant  
11 may be giving up valuable government benefits and valuable civic  
12 rights, such as the right to vote, the right to possess a firearm,  
13 the right to hold office, and the right to serve on a jury.  
14 Defendant understands that he is pleading guilty to a felony and that  
15 it is a federal crime for a convicted felon to possess a firearm or  
16 ammunition. Defendant understands that the conviction in this case  
17 may also subject defendant to various other collateral consequences,  
18 including but not limited to revocation of probation, parole, or  
19 supervised release in another case and suspension or revocation of a  
20 professional license. Defendant understands that unanticipated  
21 collateral consequences will not serve as grounds to withdraw  
22 defendant's guilty plea.

23           12. Defendant understands that, if defendant is not a United  
24 States citizen, the felony conviction in this case may subject  
25 defendant to: removal, also known as deportation, which may, under  
26 some circumstances, be mandatory; denial of citizenship; and denial  
27 of admission to the United States in the future. The Court cannot,  
28 and defendant's attorney also may not be able to, advise defendant

1 fully regarding the immigration consequences of the felony conviction  
2 in this case. Defendant understands that unexpected immigration  
3 consequences will not serve as grounds to withdraw defendant's guilty  
4 plea.

5 FACTUAL BASIS

6 13. Defendant admits that defendant is, in fact, guilty of the  
7 offense to which defendant is agreeing to plead guilty. Defendant  
8 and the USAO agree to the statement of facts provided below and agree  
9 that this statement of facts is sufficient to support a plea of  
10 guilty to the charge described in this agreement and to establish the  
11 Sentencing Guidelines factors set forth in paragraph 15 below but is  
12 not meant to be a complete recitation of all facts relevant to the  
13 underlying criminal conduct or all facts known to either party that  
14 relate to that conduct.

15 Between 2003 and January 2017, defendant worked as the Vice  
16 President of Sales and later Executive Vice President for HCT  
17 Packaging, Inc. ("HCT"), a New Jersey corporation headquartered in  
18 Santa Monica, California, where defendant was based during all  
19 relevant times. HCT is a subsidiary of HCT Group Holdings Ltd. ("HCT  
20 Group"), a Hong Kong corporation that also owns subsidiaries in Asia  
21 and the United Kingdom. HCT's business involved overseeing the  
22 design, engineering, manufacturing, and logistics of cosmetics  
23 components, such as compacts and blush applicators, for clients in  
24 the cosmetics industry. Defendant's responsibilities included, among  
25 other things, interfacing with HCT customers and suppliers in the  
26 United States and in Asia and directing orders from HCT customers to  
27 particular HCT suppliers.

1 Beginning in 2010, and continuing through at least 2016,  
2 defendant began to accept supplemental income from HCT suppliers (the  
3 "supplemental income"), including Fortune Packaging, a manufacturer  
4 located in China. In an effort to conceal the supplemental income  
5 from officials in the United States, defendant opened a foreign bank  
6 account in his name with HSBC in Hong Kong (the "Hong Kong HSBC  
7 account") by visiting an HSBC branch in Hong Kong with his project  
8 manager and HCT subordinate, Derrick Chang. Defendant then caused  
9 the HCT suppliers to deposit the supplemental income into the Hong  
10 Kong HSBC account so as to insulate the supplemental income from  
11 detection by U.S. officials.

12 During calendar year 2015, defendant had a financial interest  
13 in, and signature and other authority over, the Hong Kong HSBC  
14 account, which held an aggregate value of more than \$10,000 during  
15 2015. For example, on December 30, 2015, the Hong Kong HSBC account  
16 held a balance of approximately \$1,201,743. As defendant then knew,  
17 he was required to file, with the Department of Treasury, a Report of  
18 Foreign Bank and Financial Accounts ("FBAR") for the 2015 calendar  
19 year relating to the Hong Kong HSBC account, yet he willfully failed  
20 to do so in an attempt to avoid disclosure of the supplemental  
21 income. He instead filed an FBAR for the 2015 calendar year on June  
22 17, 2016, in which he willfully failed to report the Hong Kong HSBC  
23 account.

24 In a further attempt to avoid disclosure of the supplemental  
25 income, defendant instructed a family member in the United Kingdom to  
26 structure recurring ATM cash withdrawals out of his HSBC accounts.  
27 Defendant also created a Hong Kong business entity called "Cognisant  
28 Limited," which he used to create invoices addressed to Fortune

1 Packaging for services purportedly rendered in exchange for the  
2 supplemental income.

3 Between 2011 and 2015, defendant received supplemental income  
4 into the Hong Kong HSBC account of approximately \$5,263,321, which he  
5 failed to report to the United States Internal Revenue Service, as he  
6 knew he was required to do.

7 SENTENCING FACTORS

8 14. Defendant understands that in determining defendant's  
9 sentence the Court is required to calculate the applicable Sentencing  
10 Guidelines range and to consider that range, possible departures  
11 under the Sentencing Guidelines, and the other sentencing factors set  
12 forth in 18 U.S.C. § 3553(a). Defendant understands that the  
13 Sentencing Guidelines are advisory only, that defendant cannot have  
14 any expectation of receiving a sentence within the calculated  
15 Sentencing Guidelines range, and that after considering the  
16 Sentencing Guidelines and the other § 3553(a) factors, the Court will  
17 be free to exercise its discretion to impose any sentence it finds  
18 appropriate up to the maximum set by statute for the crime of  
19 conviction.

20 15. Defendant and the USAO agree to the following applicable  
21 Sentencing Guidelines factors:

22 Base Offense Level	24	USSG § 2S1.3(a)(2)
		USSG § 2B1.1(b)(1)(J)

23  
24 Defendant and the USAO reserve the right to argue that additional  
25 specific offense characteristics, adjustments, and departures under  
26 the Sentencing Guidelines are appropriate. By way of example, but  
27 not limitation, the government reserves the right to argue -- and  
28 defendant reserves the right to contest -- that additional two-level

enhancements under USSG §§ 2S1.3(b) (1) (A) and 2S1.3(b) (2) apply because the unreported funds in defendant's foreign account(s) were derived from criminal activity and arose from a pattern of illegal activity involving more than \$100,000 in a 12-month period, namely, the honest services wire fraud scheme described in count one of the proposed information attached as Exhibit A.

16. Defendant understands that there is no agreement as to defendant's criminal history or criminal history category.

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

#### WAIVER OF CONSTITUTIONAL RIGHTS

18. Defendant understands that by pleading guilty, defendant gives up the following trial rights with respect to count two:

- a. The right to persist in a plea of not guilty.
- b. The right to a speedy and public trial by jury.
- c. The right to be represented by counsel -- and if necessary have the Court appoint counsel -- at trial. Defendant understands, however, that defendant retains the right to be represented by counsel -- and if necessary have the Court appoint counsel -- at every other stage of the proceeding.
- d. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.
- e. The right to confront and cross-examine witnesses against defendant.

1           f.    The right to testify and to present evidence in  
2 opposition to the charges, including the right to compel the  
3 attendance of witnesses to testify.

4           g.    The right not to be compelled to testify, and, if  
5 defendant chose not to testify or present evidence, to have that  
6 choice not be used against defendant.

7           h.    Any and all rights to pursue any affirmative defenses,  
8 Fourth Amendment or Fifth Amendment claims, and other pretrial  
9 motions that have been filed or could be filed.

10                   WAIVER OF STATUTE OF LIMITATIONS

11           19.   Having been fully advised by defendant's attorney regarding  
12 application of the statute of limitations to the offense to which  
13 defendant is pleading guilty, defendant hereby knowingly,  
14 voluntarily, and intelligently waives, relinquishes, and gives up:  
15 (a) any right that defendant might have not to be prosecuted for the  
16 offense to which defendant is pleading guilty because of the  
17 expiration of the statute of limitations for that offense prior to  
18 the filing of the information alleging that offense; and (b) any  
19 defense, claim, or argument defendant could raise or assert that  
20 prosecution of the offense to which defendant is pleading guilty is  
21 barred by the expiration of the applicable statute of limitations,  
22 pre-indictment delay, or any speedy trial violation.

23                   WAIVER OF APPEAL OF CONVICTION

24           20.   Defendant understands that, with the exception of an appeal  
25 based on a claim that defendant's guilty plea was involuntary, by  
26 pleading guilty defendant is waiving and giving up any right to  
27 appeal defendant's conviction on the offense to which defendant is  
28 pleading guilty. Defendant understands that this waiver includes,

1 but is not limited to, arguments that the statute to which defendant  
2 is pleading guilty is unconstitutional, and any and all claims that  
3 the statement of facts provided herein is insufficient to support  
4 defendant's plea of guilty.

5 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

6 21. Defendant gives up the right to appeal all of the  
7 following: (a) the procedures and calculations used to determine and  
8 impose any portion of the sentence; (b) the term of imprisonment  
9 imposed by the Court, provided it is no more than 60 months; (c) the  
10 fine imposed by the Court, provided it is within the statutory  
11 maximum; (d) to the extent permitted by law, the constitutionality or  
12 legality of defendant's sentence, provided it is within the statutory  
13 maximum; (e) the amount and terms of any restitution order; (f) the  
14 term of probation or supervised release imposed by the Court,  
15 provided it is within the statutory maximum; and (g) any of the  
16 following conditions of probation or supervised release imposed by  
17 the Court: the conditions set forth in Second Amended General Order  
18 20-04 of this Court; the drug testing conditions mandated by 18  
19 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use  
20 conditions authorized by 18 U.S.C. § 3563(b)(7).

21 22. Defendant also gives up any right to bring a post-  
22 conviction collateral attack on the conviction or sentence, including  
23 any order of restitution, except a post-conviction collateral attack  
24 based on a claim of ineffective assistance of counsel or an  
25 explicitly retroactive change in the applicable Sentencing  
26 Guidelines, sentencing statutes, or statute of conviction. Defendant  
27 understands that this waiver includes, but is not limited to,  
28 arguments that the statute to which defendant is pleading guilty is



1 unconstitutional, that newly discovered evidence purportedly supports  
2 defendant's innocence, and any and all claims that the statement of  
3 facts provided herein is insufficient to support defendant's plea of  
4 guilty.

5 23. The USAO agrees that, provided all portions of the sentence  
6 are within the statutory maximum specified above, the USAO gives up  
7 its right to appeal any portion of the sentence, with the exception  
8 that the USAO reserves the right to appeal the amount of restitution  
9 ordered.

10 RESULT OF WITHDRAWAL OF GUILTY PLEA

11 24. Defendant agrees that if, after entering a guilty plea  
12 pursuant to this agreement, defendant seeks to withdraw and succeeds  
13 in withdrawing defendant's guilty plea on any basis other than a  
14 claim and finding that entry into this plea agreement was  
15 involuntary, then: (a) the USAO will be relieved of all of its  
16 obligations under this agreement; and (b) should the USAO choose to  
17 pursue any charge that was either dismissed or not filed as a result  
18 of this agreement, then: (i) any applicable statute of limitations  
19 will be tolled between the date of defendant's signing of this  
20 agreement and the filing commencing any such action; and  
21 (ii) defendant waives and gives up all defenses based on the statute  
22 of limitations, any claim of pre-indictment delay, or any speedy  
23 trial claim with respect to any such action, except to the extent  
24 that such defenses existed as of the date of defendant's signing this  
25 agreement.

1                   RESULT OF VACATUR, REVERSAL, OR SET-ASIDE

2           25. Defendant agrees that if the count of conviction is  
3 vacated, reversed, or set aside, both the USAO and defendant will be  
4 released from all their obligations under this agreement.

5                   EFFECTIVE DATE OF AGREEMENT

6           26. This agreement is effective upon signature and execution of  
7 all required certifications by defendant, defendant's counsel, and an  
8 Assistant United States Attorney.

9                   BREACH OF AGREEMENT

10          27. Defendant agrees that if defendant, at any time after the  
11 effective date of this agreement, knowingly violates or fails to  
12 perform any of defendant's obligations under this agreement ("a  
13 breach"), the USAO may declare this agreement breached. All of  
14 defendant's obligations are material, a single breach of this  
15 agreement is sufficient for the USAO to declare a breach, and  
16 defendant shall not be deemed to have cured a breach without the  
17 express agreement of the USAO in writing. If the USAO declares this  
18 agreement breached, and the Court finds such a breach to have  
19 occurred, then: (a) if defendant has previously entered a guilty plea  
20 pursuant to this agreement, defendant will not be able to withdraw  
21 the guilty plea; and (b) the USAO will be relieved of all its  
22 obligations under this agreement.

23          28. Following the Court's finding of a knowing breach of this  
24 agreement by defendant, should the USAO choose to pursue any charge  
25 that was either dismissed or not filed as a result of this agreement,  
26 then:

1           a. Defendant agrees that any applicable statute of  
2 limitations is tolled between the date of defendant's signing of this  
3 agreement and the filing commencing any such action.

4           b. Defendant waives and gives up all defenses based on  
5 the statute of limitations, any claim of pre-indictment delay, or any  
6 speedy trial claim with respect to any such action, except to the  
7 extent that such defenses existed as of the date of defendant's  
8 signing this agreement.

9           c. Defendant agrees that: (i) any statements made by  
10 defendant, under oath, at the guilty plea hearing (if such a hearing  
11 occurred prior to the breach); (ii) the agreed-to factual basis  
12 statement in this agreement; and (iii) any evidence derived from such  
13 statements, shall be admissible against defendant in any such action  
14 against defendant, and defendant waives and gives up any claim under  
15 the United States Constitution, any statute, Rule 410 of the Federal  
16 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
17 Procedure, or any other federal rule, that the statements or any  
18 evidence derived from the statements should be suppressed or are  
19 inadmissible.

20           COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

21                   OFFICE NOT PARTIES

22           29. Defendant understands that the Court and the United States  
23 Probation and Pretrial Services Office are not parties to this  
24 agreement and need not accept any of the USAO's sentencing  
25 recommendations or the parties' agreements to facts or sentencing  
26 factors.

27           30. Defendant understands that both defendant and the USAO are  
28 free to: (a) supplement the facts by supplying relevant information

1 to the United States Probation and Pretrial Services Office and the  
2 Court; (b) correct any and all factual misstatements relating to the  
3 Court's Sentencing Guidelines calculations and determination of  
4 sentence; and (c) argue on appeal and collateral review that the  
5 Court's Sentencing Guidelines calculations and the sentence it  
6 chooses to impose are not error, although each party agrees to  
7 maintain its view that the calculations in paragraph 15 are  
8 consistent with the facts of this case. While this paragraph permits  
9 both the USAO and defendant to submit full and complete factual  
10 information to the United States Probation and Pretrial Services  
11 Office and the Court, even if that factual information may be viewed  
12 as inconsistent with the facts agreed to in this agreement, this  
13 paragraph does not affect defendant's and the USAO's obligations not  
14 to contest the facts agreed to in this agreement.

15 31. Defendant understands that even if the Court ignores any  
16 sentencing recommendation, finds facts or reaches conclusions  
17 different from those agreed to, and/or imposes any sentence up to the  
18 maximum established by statute, defendant cannot, for that reason,  
19 withdraw defendant's guilty plea, and defendant will remain bound to  
20 fulfill all defendant's obligations under this agreement. Defendant  
21 understands that no one -- not the prosecutor, defendant's attorney,  
22 or the Court -- can make a binding prediction or promise regarding  
23 the sentence defendant will receive, except that it will be within  
24 the statutory maximum.

25 NO ADDITIONAL AGREEMENTS

26 32. Defendant understands that, except as set forth herein,  
27 there are no promises, understandings, or agreements between the USAO  
28 and defendant or defendant's attorney, and that no additional

1 promise, understanding, or agreement may be entered into unless in a  
2 writing signed by all parties or on the record in court.

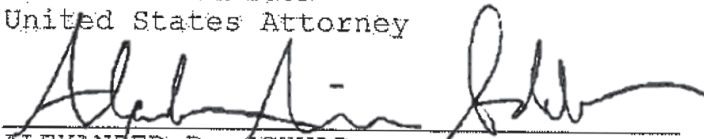
3 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

4 33. The parties agree that this agreement will be considered  
5 part of the record of defendant's guilty plea hearing as if the  
6 entire agreement had been read into the record of the proceeding.

7 AGREED AND ACCEPTED


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

10 TRACY L. WILKISON  
11 United States Attorney

12   
13 ALEXANDER B. SCHWAB  
14 CAROLYN S. SMALL  
Assistant United States Attorneys


4/15/2022

Date

15   
16 NICHOLAS GARDNER  
Defendant

4/14/22

Date

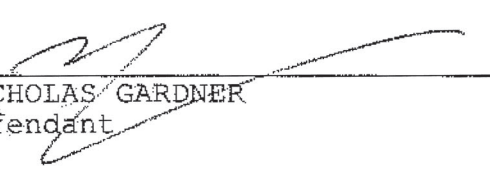
17   
18 DAVID C. SCHEPER  
19 Attorney for Defendant  
NICHOLAS GARDNER

4/14/22

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charge and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

  
\_\_\_\_\_  
NICHOLAS GARDNER  
Defendant

4/14/22  
\_\_\_\_\_  
Date



1  
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3  
4 **EXHIBIT A**

5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 NICHOLAS GARDNER,

14 Defendant.

CR No.

I N F O R M A T I O N

[18 U.S.C. § 1349: Conspiracy to  
Commit Wire Fraud Involving  
Deprivation of Honest Services; 31  
U.S.C. §§ 5314, 5322(a), (b), 31  
C.F.R. §§ 1010.350, 1010.306,  
1010.840: Willful Failure to File  
Report of Foreign Bank and  
Financial Accounts; 18 U.S.C.  
§ 981(a)(1)(C), 28 U.S.C.  
§ 2461(c): Criminal Forfeiture]

15  
16  
17  
18 The United States Attorney charges:

19 COUNT ONE

20 [18 U.S.C. § 1349]

21 A. INTRODUCTORY ALLEGATIONS

22 At times relevant to this Information:

23 1. Defendant NICHOLAS GARDNER and co-conspirator Derrick  
24 Yishin Chang were residents of Los Angeles County.

25 2. HCT Packaging, Inc. ("HCT"), was a New Jersey corporation  
26 headquartered in Santa Monica, California. HCT was a subsidiary of  
27 HCT Group Holdings Ltd. ("HCT Group"), a Hong Kong corporation that  
28 had subsidiaries in Asia and the United Kingdom. HCT's business



1 involved overseeing the design, engineering, manufacturing, and  
2 logistics of cosmetics components, such as compacts and blush  
3 applicators, for customers in the cosmetics industry.

4 3. Defendant GARDNER was employed by HCT from in or about 2003  
5 until in or about January 2017. In or about April 2009, defendant  
6 GARDNER was promoted to Executive Vice President of Sales for HCT in  
7 which capacity he reported directly to the Chief Executive Officer  
8 and owed a fiduciary duty to HCT.

9 4. Co-conspirator Chang was employed by HCT from in or around  
10 2007 until in or around January 2017. For the majority of co-  
11 conspirator Chang's tenure with HCT, he worked as a project manager  
12 reporting directly to defendant GARDNER. At the time co-conspirator  
13 Chang's employment with HCT ended, co-conspirator Chang held the  
14 position of Senior Director of Development and Manufacturing.

15 5. Defendant GARDNER and co-conspirator Chang's job  
16 responsibilities included selecting manufacturers to supply HCT  
17 product components. HCT policy prohibited employees from accepting  
18 "money or benefits of any kind for any advice or services [they] may  
19 provide to a supplier in connection with its business with the  
20 corporation."

21 6. HCT oversaw the manufacturing of cosmetics components  
22 requested by its customers. HCT submitted design specifications for  
23 a requested component to prospective manufacturers together with a  
24 request for a price quote. In selecting a manufacturer, HCT relied  
25 on factors such as manufacturing capacity, capability, and HCT's  
26 access to the manufacturer, in addition to the quoted price. Because  
27 of these considerations, HCT preferred manufacturers that were owned  
28 or controlled by HCT Group. HCT required employees involved in the

1 selection of manufacturers to obtain price quotes from at least two  
2 separate prospective manufacturers at least one of which was an HCT-  
3 controlled or owned factory.

4 7. Manufacturers generally issued invoices to HCT, which HCT  
5 often paid via international wire transfers. HCT maintained an  
6 account at HSBC Bank USA, N.A. in New Jersey (the "HCT HSBC Account")  
7 for this purpose.

8 B. OBJECT OF THE CONSPIRACY

9 8. Beginning no later than on or about September 20, 2010, and  
10 continuing until at least in or about April 2017, in Los Angeles  
11 County, within the Central District of California, and elsewhere,  
12 defendant GARDNER conspired with co-conspirator Chang and others to  
13 commit the crime of wire fraud involving deprivation of honest  
14 services, in violation of Title 18, United States Code, Sections 1343  
15 and 1346.

16 C. MANNER AND MEANS OF THE CONSPIRACY

17 9. The object of the conspiracy was carried out, and was to be  
18 carried out, in substance, as follows:

19 a. Instead of selecting manufacturers based on criteria  
20 that would advance HCT's interests, and contrary to HCT's stated  
21 policies, defendant GARDNER and co-conspirator Chang would cause HCT  
22 to award manufacturing contracts to companies (the "kickback-paying  
23 companies") that, in turn, would pay kickbacks to defendant GARDNER  
24 and co-conspirator Chang in exchange for receiving those contracts.  
25 The kickback-paying companies included actual manufacturers, such as  
26 Fortune Plastic Packaging (Huizhou) Co., which was based in China  
27 ("Fortune"), as well as companies that posed as manufacturers but  
28 that, in fact, outsourced the contracts to other companies that were

1 true manufacturers, such as JC Packaging Co., Ltd., which represented  
2 on its invoices that it was based in Taiwan ("JC Packaging").

3 b. To conceal their solicitation and receipt of the  
4 kickbacks, defendant GARDNER and co-conspirator Chang would instruct  
5 the kickback-paying companies to transfer the kickbacks through  
6 foreign wire communications to bank accounts defendant GARDNER and  
7 co-conspirator Chang would open in foreign countries, including an  
8 account at The Hongkong and Shanghai Banking Corporation Limited that  
9 defendant GARDNER opened in Hong Kong (the "GARDNER HSBC Account").

10 c. To maintain the contracts that resulted in the  
11 kickbacks, thereby ensuring the continued payment of the kickbacks,  
12 defendant GARDNER and co-conspirator Chang would orchestrate the use  
13 of interstate and foreign wire communications to cause invoices to be  
14 sent from the kickback-paying companies to HCT and payments to be  
15 sent from HCT to the kickback-paying companies.

16 d. Defendant GARDNER would create business entities,  
17 including "Cognisant Limited," a Hong Kong company, which he would  
18 use to issue invoices to the kickback-paying companies. The invoices  
19 would purport to be for payments for valid business expenses incurred  
20 by the business entities defendant GARDNER had created. In fact, the  
21 invoices were not for valid business expenses and were instead used  
22 to solicit kickbacks from the kickback-paying companies and to  
23 conceal the nature of the kickback payments defendant GARDNER  
24 received.

25 e. To further the conspiracy and to ensure that they  
26 received all of the kickback payments generated by the conspiracy,  
27 defendant GARDNER and co-conspirator Chang would maintain a ledger  
28 titled "Special Items" (the "Special Items Ledger") that tracked the

1 kickbacks they were owed by the kickback-paying companies and those  
2 they had already received. Defendant GARDNER and co-conspirator  
3 Chang would also electronically communicate with each other  
4 concerning the receipt of kickback payments.

5 f. To further the conspiracy, defendant GARDNER and co-  
6 conspirator Chang would conceal evidence of their conspiracy from HCT  
7 by, among other things, failing to disclose and affirmatively denying  
8 their financial interests in, among other things, entities and bank  
9 accounts used to carry out the scheme, to HCT and its agents and by  
10 deleting incriminating files from their HCT-issued digital devices.

COUNT TWO

[31 U.S.C. §§ 5314, 5322(a),

31 C.F.R. §§ 1010.350, 1010.306, 1010.840]

A. INTRODUCTORY ALLEGATIONS

10. At times relevant to this Information:

a. Citizens and residents of the United States who had a financial interest in, or signature or other authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a calendar year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts ("FBAR"), for every such calendar year.

b. Defendant NICHOLAS GARDNER was a resident of the United States.

c. During calendar year 2015:

i. Defendant GARDNER had an interest in and signature authority over one or more financial accounts at a bank located in Hong Kong, a foreign country (the "foreign account(s)"), namely, the GARDNER HSBC Account, and

ii. The foreign account(s) had an aggregate value in excess of \$10,000 at some time during the calendar year.

B. FAILURE TO FILE REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

11. On or about April 15, 2016, in Los Angeles County, within the Central District of California, and elsewhere, defendant GARDNER knowingly and willfully failed to file with the Department of the Treasury an FBAR disclosing that he had a financial interest in, and signature and other authority over, one or more bank and other financial accounts in a foreign country that had an aggregate value at any time during 2015 of more than \$10,000.

FORFEITURE ALLEGATION

[18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c)]

12. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in the event of defendant NICHOLAS GARDNER's conviction of the offense set forth in Count One of this Information.

13. Defendant GARDNER, if so convicted, shall forfeit to the United States of America the following:

a. All right, title, and interest in any and all property, real or personal, constituting, or derived from, any proceeds traceable to the offenses; and

b. To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

14. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), defendant GARDNER, if so convicted, shall forfeit substitute property, up to the value of the property described in the preceding paragraph if, as the result of any act or omission of the defendant, the property described in the preceding paragraph or any portion thereof (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to, or deposited with a third party; (c) has been placed beyond the jurisdiction of the court; (d) has

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1 been substantially diminished in value; or (e) has been commingled  
2 with other property that cannot be divided without difficulty.

3  
4 TRACY L. WILKISON  
5 United States Attorney  
6

7 SCOTT M. GARRINGER  
8 Assistant United States Attorney  
9 Chief, Criminal Division

10 RANEE A. KATZENSTEIN  
11 Assistant United States Attorney  
12 Chief, Major Frauds Section

13 ALEXANDER B. SCHWAB  
14 CAROLYN S. SMALL  
15 Assistant United States Attorneys  
16 Major Frauds Section  
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