

UNITED STATES DISTRICT COURT

Northern

District of

California

UNITED STATES OF AMERICA
V.

RUBYCON CORPORATION

JUDGMENT IN A CRIMINAL CASE
(For Organizational Defendants)

CASE NUMBER: CR 16-367 JD

Michael Brett Burns (Retained)
Defendant Organization's Attorney

THE DEFENDANT ORGANIZATION:

- pleaded guilty to count(s) One of the Information
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) _____
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|--------------------------|----------------------|--------------|
| 15 U.S.C. § 1 | Price Fixing | 1/31/2014 | One |
| | | | |

The defendant organization is sentenced as provided in pages 2 through 5 of this judgment.

- The defendant organization has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's
Federal Employer I.D. No.: 98-0350851

Defendant Organization's Principal Business Address:

Rubycon Corporation, 1938-1, Nishi-Minowa, Ina City,
Nagano Prefecture, 399-4593, Japan

1/25/2017
Date of Imposition of Judgment


Signature of Judge

James Donato U.S. District Judge
Name of Judge Title of Judge

2/3/2017
Date

Defendant Organization's Mailing Address:

c/o M. Brett Burns
Hunton & Williams LLP
575 Market Street, Suite 3700
San Francisco, CA 94105

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PROBATION

The defendant organization is hereby sentenced to probation for a term of :
Five years.

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

See additional probation terms.

STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

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ADDITIONAL PROBATION TERMS

- 1) Defendant will develop a corporate compliance program consistent with USSG § 8B2.1, including antitrust compliance standards and procedures to be followed by all officers, directors, and employees of the defendant and its current subsidiaries who have any responsibility for the sale or marketing of electrolytic capacitors;
- 2) Defendant will implement the corporate compliance program, including (i) training on a periodic basis concerning the requirements of the antitrust laws and the above standards and procedures, and (ii) periodic communications by high-level personnel reinforcing the defendant's commitment to the corporate compliance program and adherence to the antitrust laws; and
- 3) Defendant will submit annual written reports to the Antitrust Division of the U.S. Department of Justice and the United States Probation Office on the defendant's progress in implementing the corporate compliance program.

The development and implementation of the corporate compliance program will apply to the defendant, its subsidiaries, and any entity in which, after the date on which the plea agreement was signed, the defendant has a greater than 50% ownership interest.

- 4) Defendant will cooperate with U.S. enforcement authorities as agreed to.

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CRIMINAL MONETARY PENALTIES

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

| | | | |
|---------------|-------------------|------------------|--------------------|
| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
| TOTALS | \$ 400.00 | \$ 12,000,000.00 | \$ 0.00 |

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTALS | \$ 0.00 | \$ 0.00 | |

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
- not later than _____, or
 in accordance with C or D below; or
- B Payment to begin immediately (may be combined with C or D below); or
- C Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Special instructions regarding the payment of criminal monetary penalties:

The \$400 special assessment will be paid by 1/30/2017.

The \$12 million fine will be paid as follows: (1) \$500,000 due by 2/24/17; (2) \$500,000 due by 1/25/18; (3) \$1.5 million due by 1/25/19; (4) \$2.5 million due by 1/25/20; (5) \$3.5 million due by 1/25/21; and (6) \$3.5 million due by 1/25/22. Rubycon Corporation will have the option to prepay at any time the remaining balance then owing.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant organization shall pay the cost of prosecution.
- The defendant organization shall pay the following court cost(s):
- The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.