

JUN 11 2019 

**JEANNE G. QUINATA**  
CLERK OF COURT

**ORIGINAL**  


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11 *Attorneys for Plaintiff*

12  
13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE TERRITORY OF GUAM**

15 UNITED STATES OF AMERICA,  
16  
Plaintiff,

Case No.: 19-00024

17 vs.

**PLEA AGREEMENT**

18 FUKUICHI GYOGYO KABUSHIKI KAISHA,  
19  
Defendant.

20 Pursuant to Rule 11(c)(1)(C), the United States and the defendant, Fukuichi Gyogyo  
21 Kabushiki Kaisha (“FUKUICHI” or “Defendant”), enter into the following plea agreement:

22 1. FUKUICHI agrees to waive indictment and enter a guilty plea to a three-count  
23 Information charging it with two counts of violating the Act to Prevent Pollution from Ships, in  
24

1 violation of 33 U.S.C. § 1908(a), and one count of Obstruction of an Agency Proceeding, in  
2 violation of 18 U.S.C. § 1505.

3 **TERMS**

4 2. FUKUICHI understands that the maximum sentence for a violation of the Act to  
5 Prevent Pollution from Ships is a \$500,000 fine, a special assessment fee of \$400, and five  
6 years of probation. FUKUICHI understands that the maximum sentence for Obstruction of an  
7 Agency Proceeding is a \$500,000 fine, a special assessment fee of \$400, and five years of  
8 probation.

9 2(a). FUKUICHI understands that the fine and special assessment must be paid at the  
10 time of sentencing.

11 2(b). Upon the District Court's adjudication of guilt of FUKUICHI for violations of Title  
12 33, United States Code, Section 1908(a) and Title 18, United States Code, Section 1505, the  
13 United States Attorney for the District of Guam, and the Environmental Crimes Section of the  
14 Department of Justice, will not file any further criminal charges against FUKUICHI arising out  
15 of the same transactions or occurrences to which FUKUICHI has pled.

16 2(c). Nothing in this agreement shall protect FUKUICHI in any way from prosecution  
17 for any offense committed after the date of this agreement.

18 2(d). FUKUICHI agrees to waive any objections it may have to the United States'  
19 jurisdiction over this action or to venue in the District of Guam.

20 **RULE 11(c)(1)(C) WARNINGS**

21 3. Defendant is aware that, pursuant to Federal Rule of Criminal Procedure  
22 11(c)(1)(C) the Court may accept or reject the plea agreement, or may defer its decision as to its  
23 acceptance or rejection until it has considered the pre-sentence report. If the Court rejects the plea  
24 agreement, the court shall, on the record, inform the parties of this fact, and afford Defendant an

1 opportunity to withdraw the guilty plea and advise Defendant that if Defendant persists in a guilty  
2 plea, the disposition of the case may be less favorable to Defendant than that contemplated in the  
3 plea agreement. In addition, as part of the terms and conditions of this plea agreement, the parties  
4 agree that, should the Court envision sentencing Defendant to a fine or conditions lesser than the  
5 recommendation in paragraph 8 below, the United States has the right to withdraw from the plea  
6 agreement entirely.

7 **ELEMENTS OF OFFENSES**

8 4. Defendant acknowledges that the government can prove the following essential  
9 elements of Counts One through Three as set forth in the Information:

10 COUNT 1: (1) Defendant was a person;

11 (2) Defendant owned the *F/V Fukuichi Maru No. 112*, a vessel of 400 gross tons  
12 or above, which operated under the authority of a country other than the United  
13 States;

14 (3) Defendant, acting through an agent or employee, knowingly maintained an Oil  
15 Record Book that did not accurately record the disposal of oily bilge waste and  
16 oily mixtures; and

17 (4) The knowing failure to accurately maintain the Oil Record Book occurred in  
18 the navigable waters and jurisdiction of the United States.

19 All in violation of Title 33, United States Code, Section 1908(a); Title 33, Code of Federal  
20 Regulations, Sections 151.09(a)(5), 151.25(a), (d)(3), and (d)(5); and Title 18, United States  
21 Code, Section 2.

22 COUNT 2: (1) Defendant was a person;

23 (2) Defendant owned the *F/V Fukuichi Maru No. 112*, a vessel operated under  
24 the authority of a country other than the United States;

1 (3) Defendant, acting through an agent or employee, knowingly maintained  
2 an inaccurate and false Garbage Record Book; and

3 (4) The knowing failure to accurately maintain the Garbage Record Book  
4 occurred within the navigable waters and jurisdiction of the United States.

5 All in violation of Title 33, United States Code, Section 1908(a); Title 33, Code of Federal  
6 Regulations, Sections 151.51(a)(2), 151.55(a), (b), (d), and (f); and Title 18, United States Code,  
7 Section 2.

8 COUNT 3: (1) Defendant was a person;

9 (2) The Defendant, acting through an agent or employee, obstructed, impeded,  
10 or endeavored to impede any pending proceeding held before any department  
11 or agency of the United States; and

12 (3) The Defendant, acting through an agent or employee, acted corruptly.

13 All in violation of Title 18, United States Code, Section 1505.

14 **SENTENCING GUIDELINES**

15 5. The parties agree that the imposition of a fine is not governed by the Sentencing  
16 Guidelines. That is because, although the offense conduct to which Defendant is pleading guilty  
17 is covered by U.S.S.G. § 2Q1.3, " Mishandling of Other Environmental Pollutants; Recordkeeping,  
18 Tampering, and Falsification," and U.S.S.G. § 2J1.2, "Obstruction of Justice," those Guidelines  
19 are not listed under U.S.S.G. § 8C2.1, which governs criminal fines for organizations.  
20 Accordingly, pursuant to U.S.S.G. § 8C2.10, the sentence of a fine is determined by applying  
21 Title 18, United States Code, Sections 3553 and 3572.

22 **FACTUAL BASIS**

23 6. Defendant is pleading guilty because the Defendant is in fact guilty of the charges  
24 contained in Counts One through Three. In pleading guilty to these offenses, Defendant

1 acknowledges that should the case go to trial, the government could present evidence to support  
2 these charges beyond a reasonable doubt. The Factual Basis is as follows.

3 6(a). The *F/V Fukuichi Maru No. 112* is an ocean-going, stern-chute, purse-seiner  
4 fishing vessel. The vessel is 1,093 gross tons and is registered or “flagged” by Japan. FUKUICHI  
5 has owned and operated the *F/V Fukuichi Maru No. 112* since 1990. FUKUICHI is a company  
6 registered in Japan with an operating address of Kabushiki Kaiysa 5-9-25, Nakaminato, Yaizu-  
7 shi, Shizuoka-ken, 425-0021 Japan. FUKUICHI also owns and operates four other fishing vessels  
8 including the *F/V Fukuichi Maru No. 83*, *F/V Fukuichi Maru No. 85*, *F/V Fukuichi Maru No. 123*,  
9 and *F/V Fukuichi Maru No. 128*.

10 6(b). The *F/V Fukuichi Maru No. 112* has a crew consisting of, among others, a Captain,  
11 Fish Master, Chief Engineer and First Officer. These crewmembers acted on behalf of  
12 FUKUICHI to carry out activities on the vessel to ensure the vessel was able to operate  
13 internationally. All of the actions taken by these crewmembers as described in this Factual Basis  
14 were within the course and scope of their employment and/or agency on behalf of FUKUICHI  
15 and for its benefit, at least in part.

16 6(c). On or about April 1, 2019, in Apra Harbor, Guam, members of the U.S. Coast  
17 Guard (“the inspectors”) conducted a Port State Control examination of the *F/V Fukuichi Maru*  
18 *No. 112*. The *F/V Fukuichi Maru No. 112* had called upon Apra Harbor to effectuate repairs on  
19 its cargo refrigeration system. The inspectors discovered fifteen pollution and safety deficiencies  
20 and detained the vessel pursuant to the International Convention on the Prevention of Pollution  
21 from Ships (“MARPOL”). The inspectors discovered that there were numerous leaks of water  
22 and oil that accumulated in the engine room bilge including from service pumps, the fish hold  
23 cooling system, the diesel generators and other machinery.

1           6(d). The inspectors examined the vessel's Oil Water Separator ("OWS"). They asked  
2 the Chief Engineer of the vessel to demonstrate proper operation of the OWS, as is typical in a  
3 Port State Control Inspection. The Chief Engineer was unable to demonstrate proper operation of  
4 the OWS. The inspectors examined the OWS suction and discharge piping and found it to have  
5 no oily residue but it also appeared to not have been used recently. The inspectors, utilizing the  
6 services of an interpreter, questioned the Chief Engineer about the practice that he used on the  
7 vessel to manage oily bilge water and oil waste (also known as oil mixtures). The Chief Engineer  
8 stated that he had discharged oily bilge water and oil mixtures directly overboard through the  
9 emergency bilge pump system and by using buckets without using the OWS.

10           6(e). The inspectors examined the emergency bilge pump system and discovered that  
11 the emergency bilge pump valve was coated in heavy black oil. A flexible hose connected to the  
12 discharge side of the emergency bilge pump also contained oily residue. The examination of the  
13 OWS, emergency bilge piping, and the statements by the Chief Engineer, all indicated that it was  
14 a long-standing practice on the *F/V Fukuichi Maru No. 112* to discharge oily bilge water and oily  
15 mixtures directly into the sea without using an OWS or an incinerator.

16           6(f). The inspectors examined the Oil Record Book ("ORB"). The ORB consisted of  
17 one hardbound book that covered a time span of nearly thirty years. The inspectors noted that this  
18 was highly unusual and that a properly maintained ORB would span several volumes over the  
19 course of years. The inspectors noted that there were two hundred and thirty-three entries in the  
20 ORB indicating that the OWS was used, however, the throughput for the OWS recorded in the  
21 ORB exceeded the maximum throughput for the OWS that was documented on the International  
22 Oil Pollution Prevent ("IOPP") certificate. A subsequent review of the ORB later in the inspection  
23 revealed that the Chief Engineer had erased forty-two of the original entries in the ORB and  
24 replaced them with a throughput capacity that matched the IOPP certificate. The inspectors also

1 found that: (1) there were one hundred and ninety-two weekly tank soundings for the sludge tank  
2 (weekly collection) that were not logged in the ORB as required, (2) there were fifty-one shore-  
3 side disposal receipts that were not logged in the ORB as required, (3) there were seventy-one  
4 lubrication and bunker fuel deliveries that were not recorded in the ORB as required, and (4) there  
5 were seventy entries in the ORB that indicated a discharge had occurred, however, the locations  
6 of the discharges (in latitude and longitude) were not recorded as required.

7 6(g). The inspectors also examined the Garbage Record Book ("GRB"). The inspectors  
8 discovered that instead of the officer in charge of the operations signing his name, there were  
9 simply "ditto" marks. The GRB was missing sixty-seven entries for shore-side discharges dating  
10 from February 6, 2015, until April 1, 2019. The vessel also had onboard sixty garbage discharge  
11 receipts that did not indicate an estimated quantity of wastes discharged to the facility as required.  
12 During interviews of crewmembers, the inspectors discovered that animal carcasses and fishing  
13 gear, including plastics, had been discharged overboard from the vessel but not recorded in the  
14 GRB as required.

### 15 COOPERATION

16 7. Defendant agrees to cooperate with the United States' continuing investigation.  
17 Such cooperation will consist of providing for the transportation, lodging, and per diem costs  
18 associated with any employee or former employee of FUKUICHI that the United States requests  
19 to be present in Guam for further related proceedings.

### 20 SENTENCING RECOMMENDATIONS

21 8. The parties agree, having taken into consideration all of the sentencing factors set  
22 forth in 18 U.S.C. §§ 3553 and 3572, that the following sentence should be imposed upon  
23 Defendant:





1 of a claim of ineffective assistance of counsel. Defendant has discussed these rights with its  
2 attorneys. Defendant understands the rights being waived, and Defendant waives these rights  
3 knowingly, intelligently, and voluntarily. This agreement does not affect the rights or obligations  
4 of the United States as set forth in Title 18, United States Code, Section 3742(b).

5 9(a). The parties reserve the right to allocute fully and will recommend that the sentence  
6 be in accordance with this plea agreement.

7 **VICTIM RESTITUTION**

8 10. Defendant shall make full restitution to the victims regarding the crimes charged.  
9 Should the district court identify victim(s) and determine that restitution is due, the district court  
10 may require Defendant to make the restitution payable at once or on a payment schedule.

11 10(a). Defendant agrees that, while the district court sets the payment schedule, this  
12 schedule may be exceeded if and when Defendant's financial circumstances change. In that event,  
13 and consistent with its statutory obligations, the United States may take any and all actions  
14 necessary to collect the maximum amount of restitution in the most expeditious manner available.

15 10(b). Defendant further understands and agrees that the United States has the  
16 obligation and the right to pursue any legal means, including, but not limited to, submission of  
17 the debt to the Treasury Offset Program, to collect the full amount of restitution.

18 10(c). Based upon the information known to the parties at the time of execution of this  
19 plea agreement, there are no known victims.

20 **CORPORATE RESOLUTION**

21 11. Defendant must present in open court the original corporate resolution duly  
22 enacted by Defendant's Board of Directors authorizing the entry into this plea agreement and  
23 pledging to abide by all of its terms and the probationary terms ordered by the Court.

24 //

**ACKNOWLEDGEMENT OF RIGHTS**

12. Defendant acknowledges that Defendant has been advised of Defendant's rights as set forth below prior to entering into this Plea Agreement. Specifically, Defendant has been fully advised of, and has had sufficient opportunity to reflect upon, and understands the following:

12(a). The nature and elements of the charge and the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;

12(b). Defendant's right to be represented by an attorney;

12(c). Defendant's right to plead not guilty and the right to be tried by a jury and at that trial, the right to be represented by counsel, the right to confront and cross-examine witnesses against Defendant, and the right against self-incrimination, that is, the right not to testify;

12(d). That if Defendant pleads guilty, there will not be a further trial of any kind on the charges to which such plea is entered so that by entering into this Plea Agreement, Defendant waives, that is, gives up, the right to a trial;

12(e). That, upon entry of a plea of guilty, or thereafter, the Court may ask Defendant questions about the offenses to which Defendant has pled, under oath, and that if Defendant answers these questions under oath, on the record, Defendant's answers may later be used against Defendant in prosecution for perjury or false statement if an answer is untrue;

12(f). That Defendant agrees that the Plea Agreement is voluntary and not a result of any force, threats or promises apart from this Plea Agreement;

12(g). Defendant is satisfied with the representation of counsel and agrees that Defendant's counsel has done everything possible for Defendant's defense.

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//

//

1 CONCLUSION

2 13. There are no other agreements between the United States Attorney for the District  
3 of Guam, the Environmental Crimes Section of the Department of Justice, and Defendant.  
4 Defendant enters this agreement knowingly, voluntarily, and upon advice of counsel.

5 14.

6 RESPECTFULLY SUBMITTED this 14th day of June, 2019.

7 SHAWN N. ANDERSON  
8 United States Attorney  
9 Districts of Guam and the NMI

10 By: 

MARIVIC P. DAVID  
Assistant U.S. Attorney

11 By: 

KENNETH E. NELSON  
Senior Trial Attorney

12  
13  
14  
15 石倉一光 K. Nagura  
16 Corporate Representative  
Fukuichi Gyogyo Kabushiki Kaisha

17 Daniel J. Berman  
18 Daniel J. Berman By Bill H Mann  
19 Attorney for Defendant

Minutes of a Meeting of the Board of Directors of  
Fukuichi Gyogyo Kabushiki Kaisha, a Japanese Corporation

Meeting held on 7 th day of June 2019 at Headquarters Office in Japan

Present:

Mr. Kazushige Kondo	- President and Director
Mr. Daisuke Kondo	- Secretary and Director
Mr. Hiroshi Kondo	- Director
Mr. Kazuaki Nagura	- Director (now in Guam attended by telephone)
Mr. Taichiro Kondo	- Director
Mr. Yohai Kondo	- Director
Mr. Daizo Kondo	- Director

Mr. Kazushige Kondo, President and Director of Fukuichi Gyogyo Kabushiki Kaisha (hereinafter "the Corporation") took the chair and acted as Chairman and called the Meeting to order. Mr. Daisuke Kondo acted as Secretary of the Corporation and recorded these minutes. The Chairman declared that the Notice of the Meeting had been duly waived and that all directors were present in person (except Mr. Nagura who is in Guam and attended by telephone by unanimous consent) and that the Meeting was duly constituted. On motion duly made, seconded and unanimously carried:

**IT WAS RESOLVED:**

THAT, the terms and conditions of the written Plea Agreement, dated 7th day of June 2019 between the United States of America and the Corporation, having been explained to the Board by its counsel, and the Board

understanding those terms and conditions, and all corporate formalities required for the authorizations contained herein having been observed, the Corporation hereby assents to those terms and conditions and agrees to enter into the said written Plea Agreement in the case No: \_\_\_\_\_ in the United States District Court for the Territory of Guam. A copy of the written Plea Agreement is attached hereto as Exhibit "B", and the underlying form of Information against the Corporation is attached as Exhibit "A"; and, whereas the Board of Directors deems it in the best interest of the Corporation to enter into the Plea Agreement; and,

BE IT RESOLVED THAT, Mr. Kazushige Kondo, Authorized Representative of the Corporation, and/or Attorney Daniel J. Berman of BIERMAN O'CONNOR & MANN, each be and hereby is authorized, empowered and directed to execute the Plea Agreement on behalf of the Corporation and to execute any and all other documents and instruments, and to take any and all actions to do any and all other things necessary or incidental for the execution and entry of the Plea Agreement; and,

THAT, Mr. Kazushige Kondo, Authorized Representative of the Corporation, and/or Attorney Daniel J. Berman of BIERMAN O'CONNOR & MANN, be and hereby are authorized to appear before the United States District Court, District of Guam, and enter a plea of guilty on behalf of the Corporation in accordance with the terms of the Plea Agreement in the case No: \_\_\_\_\_ in the United States District Court for the Territory of Guam; and,

THAT, the Board, having been advised by counsel that the charges to which the Corporation will plead guilty pursuant to the written Plea Agreement in the case No: \_\_\_\_\_ in the United States District Court for the Territory of Guam, are presented by Information dated June 7th, 2019 in the form set out

in Exhibit "A"; and, the Board having been advised of the Corporation's right to be charged by grand jury indictment and fully understanding that right; THAT the Corporation hereby authorizes, directs and empowers Mr. Kazushige Kondo, Authorized Representative of the Corporation, and/or Attorney Daniel J. Berman of BERMAN O'CONNOR & MANN, to appear before the United States District Court, District of Guam, and, in that case, waive the Corporation's right to be charged by grand jury indictment and consent to being charged by Information as set out in Exhibit "A".

**AND IT IS FURTHER RESOLVED:**

THAT, the Corporation, acknowledges that, with the consent of its Board of Directors, it is, and has been, represented in this matter by its counsel, Attorney Daniel J. Berman of BERMAN O'CONNOR & MANN; and,

THAT, the Corporation, by its Board of Directors, acknowledges that it has been fully informed and counseled by its attorney in respect to the Plea Agreement and the possible fines, penalties and consequences thereof, and the Corporation understands the provisions of the Plea Agreement in the form set out in Exhibit "B", their contents and consequences; and,

THAT, the Corporation fully understands and accepts the conditions of probation set forth in the Plea Agreement in the form set out in Exhibit "B".

**AND IT IS FURTHER RESOLVED:**

THAT, the Board of Directors deem it in the best interests of the Corporation to enter into that Plea Agreement in the form set out in Exhibit "B"; and,

THAT, Mr. Kazushige Kondo, Authorized Representative of the Corporation, and/or Attorney Daniel J. Berman of BERMAN O'CONNOR & MANN, be and are hereby authorized, to appear before the Court at the time of sentencing, to allocute on behalf of the Corporation, and to do any and all things necessary to

enter the plea of guilty to the charges against the Corporation set out in the Information (in the form of Exhibit "A") and to accept the sentence imposed by the Court on behalf of the Corporation, and to deliver payment of any and all fines, community service payments and special assessments, as required.

Executed this 7th day of June 2019.

By: 近藤 一成  
Mr. Kazushige Kondo  
President and Director

By: 近藤 大輔  
Mr. Daisuke Kondo  
Secretary and Director

By: 近藤 洋  
Mr. Hiroshi Kondo  
Director

By: 近藤 大一郎  
Mr. Taichiro Kondo  
Director

By: 近藤 洋平  
Mr. Yohei Kondo  
Director

By: 近藤 大三  
Mr. Daizo Kondo  
Director

By: 名倉 晃  
Mr. Kazuaki Nagura (Signature in PDF copy)  
Director

# Exhibit A

1 SHAWN N. ANDERSON  
United States Attorney  
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Assistant U.S. Attorney  
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10 Office: (202) 305-0435  
Fax: (202) 514-8865

11 *Attorneys for Plaintiff*

12  
13 **IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM**

14 UNITED STATES OF AMERICA

Case No.: \_\_\_\_\_

15 Plaintiff

16 vs.

INFORMATION

17 ACT TO PREVENT POLLUTION FROM  
SHIPS

18 FUKUICHI GYOGYO KABUSHIKI  
KAISHA,

[33 U.S.C. § 1908(a)]

19 Defendant

OBSTRUCTION OF AN AGENCY  
PROCEEDING

[18 U.S.C. § 1505]

20  
21 THE UNITED STATES ATTORNEY CHARGES:

22 **COUNT ONE**

23 (Act to Prevent Pollution from Ships - 33 U.S.C. § 1908(a))

24 **FACTUAL BACKGROUND**



1 At all times relevant herein,

2 1. The *F/V Fukuichi Maru No. 112* was an ocean-going, stern-chute, purse-seiner  
3 fishing vessel. The vessel was 1,093 gross tons and was registered or “flagged” by Japan. The  
4 *F/V Fukuichi Maru No. 112* was owned and operated by defendant Fukuichi Gyogyo Kabushiki  
5 Kaisha (“FUKUICHI”).

6 2. FUKUICHI was a company registered in Japan with an operating address of  
7 Kabushiki Kaiysha 5-9-25, Nakaminato, Yaizu-shi, Shizuoka-ken, 425-0021 Japan. FUKUICHI  
8 owned and operated five fishing vessels including the *F/V Fukuichi Maru No. 112*. FUKUICHI  
9 has owned and operated the *F/V Fukuichi Maru No. 112* since 1990.

10 3. The *F/V Fukuichi Maru No. 112* had a crew consisting of, among others, a Master,  
11 Fish Master, Chief Engineer and First Officer. These crewmembers acted on behalf of  
12 FUKUICHI to carry out activities on the vessel to ensure the vessel was able to operate  
13 internationally. All of the actions taken by these crewmembers as described in this Information  
14 were within the course and scope of their employment and/or agency on behalf of FUKUICHI  
15 and for its benefit, at least in part.

16 4. On vessels like the *F/V Fukuichi Maru No. 112*, oily waste, also known as oil bilge  
17 water and waste oil, is generated on a regular basis. Waste oil (sometimes referred to as oily  
18 mixtures) is the result of oil leakages from various machinery as well as from replacing lubrication  
19 oils in the machinery. Oily bilge water refers to oil and water that drips and leaks from machinery  
20 and mechanical systems and accumulates in the bilge, which is the bottom-most portion of the  
21 engine room. Waste oil and oily mixtures can only be disposed of in two manners: (1) incineration  
22 in the vessel’s onboard incinerator, or (2) disposal to a barge or other shore-based disposal facility.  
23 Oily bilge water can also be disposed of in only two manners: (1) processing through the onboard  
24 Oil Water Separator and Oil Content Monitor resulting in an overboard discharge of water with

1 no more than 15 parts per million (“ppm”) of oil, or (2) disposal to a barge or other shore-based  
2 disposal facility. Prior to disposal, oily bilge water is transferred to, and stored in, the vessel’s  
3 bilge water holding tank. All disposals of waste oil, oily mixtures or oily bilge water, whether  
4 through incineration, use of the Oil Water Separator, or transfer to a shore-based facility, must be  
5 recorded by the person or persons in charge of those operations in the vessel’s Oil Record Book.  
6 The Chief Engineer on the *F/V Fukuichi Maru No. 112* was the person in charge of these  
7 operations and required to accurately record in the Oil Record Book. The Master of the *F/V*  
8 *Fukuichi Maru No. 112* was required to maintain an accurate Oil Record Book.

9 5. The *F/V Fukuichi Maru No. 112* sailed into the United States Territory of Guam  
10 on or about April 1, 2019, to effectuate repairs to its cargo refrigeration system.

#### 11 LEGAL BACKGROUND

12 6. The United States is part of an international regime that regulates the discharge of  
13 oil from vessels at sea: the International Convention for the Prevention of Pollution from Ships,  
14 as modified by the Protocol of 1978 (together, “MARPOL”). MARPOL is embodied in  
15 agreements that the United States has ratified and has been implemented in the United States by  
16 the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. §§ 1901 *et seq.* APPS makes it a  
17 crime for any person to knowingly violate MARPOL, APPS, or regulations promulgated under  
18 APPS. 33 U.S.C. § 1908. These regulations apply to all commercial vessels operating in the  
19 navigable waters of the United States or while in a port or terminal under the jurisdiction of the  
20 United States, including vessels operating under the authority of a country other than the United  
21 States. 33 U.S.C. § 1902(a)(1)(3).

22 7. MARPOL Annex I (“Regulations for the Prevention of Pollution by Oil”)   
23 established international standards governing the treatment and disposal of oily mixtures  
24 generated from the machinery spaces of a vessel. Under MARPOL, oily bilge water may be

1 discharged overboard into the ocean only if it does not exceed 15 ppm of oil and the ship has in  
2 operation required pollution prevention equipment. This equipment includes: an oil filter, known  
3 as an Oil Water Separator; an alarm, known as an Oil Content Monitor; and an automatic stopping  
4 device, known as a Three-Way Valve. This equipment prevents the discharge of oily bilge water  
5 containing more than 15 ppm oil, the maximum legally permitted concentration of oil in the  
6 dischargeable mixture.

7 8. Consistent with the requirements contained in MARPOL, APPS regulations  
8 require that vessels such as the *F/V Fukuichi Maru No. 112* maintain a record known as an Oil  
9 Record Book in which the disposal, transfer, and discharge overboard of sludge, oil residue, oily  
10 mixtures, and oily bilge water must be recorded. 33 C.F.R. § 151.25(d). Discharges from the  
11 machinery spaces must be fully and accurately recorded in the Oil Record Book without delay by  
12 the person or persons in charge of the operations. 33 C.F.R. § 151.25(d) and (h). The Oil Record  
13 Book also must record any emergency, accidental, or other exceptional discharges of oil or oily  
14 mixtures, including a statement of the circumstances of, and reasons for, the discharge. 33 C.F.R.  
15 § 151.25(g). The Oil Record Book must be maintained aboard the vessel for not less than three  
16 years, and be readily available for inspection at all reasonable times. MARPOL Annex I  
17 Regulation 17.6; 33 C.F.R. § 151.25(i). According to 33 C.F.R. § 151.25(j), “[t]he master or other  
18 person having charge of a ship required to keep an Oil Record Book shall be responsible for the  
19 maintenance of such record.” Other members of the ship’s crew, including Chief Engineers, may  
20 aid and abet and cause the vessel Master’s failure to maintain an accurate Oil Record Book under  
21 18 U.S.C. § 2.

22 9. The requirements contained in MARPOL Annex V and APPS regulations prohibit  
23 the discharge overboard of plastic or garbage mixed with plastic. 33 C.F.R. § 155.67. In addition,  
24 APPS and MARPOL regulations require that vessels such as the *F/V Fukuichi Maru No. 112* keep

1 a written record known as a Garbage Record Book in which any discharge overboard and  
2 discharge to shore of garbage, including plastics, must be recorded, including the date and time,  
3 volume and, if discharged at sea, the latitude and longitude. 33 C.F.R. § 151.55 and MARPOL  
4 Annex V Regulation 9(3)(a). All discharges of garbage to a shore-side facility must be fully  
5 recorded. 33 C.F.R. § 155.55 (a)(1). Each discharge operation shall be recorded in the Garbage  
6 Record Book and signed for on the date of the discharge by the officer in charge and each  
7 completed page of the Garbage Record Book shall be signed by the Master of the ship. MARPOL  
8 Annex V Regulation 9(3)(a). Entries in the Garbage Record Book must be prepared at the time  
9 of the operation, certified as correct by the Master or person in charge of the ship, maintained on  
10 the ship for two years following the operation, and made available for inspection by the Coast  
11 Guard. 33 C.F.R. § 151.55(f).

12 10. The United States Coast Guard, an agency of the United States Department of  
13 Homeland Security, is charged with enforcing the laws of the United States and is empowered  
14 under Title 14, United States Code, Section 511(a), to board vessels and conduct inspections and  
15 investigations of potential violations and to determine compliance with MARPOL, APPS, and  
16 related regulations. In conducting inspections, United States Coast Guard personnel rely on the  
17 statements of the vessel's crew and documents, including information contained in the Oil Record  
18 Book and Garbage Record Book. The United States Coast Guard is specifically authorized to  
19 examine a vessel and its Oil Record Book and Garbage Record Book for compliance with  
20 MARPOL and APPS. 33 U.S.C. § 1907(d); 33 C.F.R. § 151.23(a)(3) and (c); MARPOL, Annex  
21 I, Regulation 11 & Annex V, Regulation 9; and 33 C.F.R. § 151.61(a) and (c).

22 11. On or about April 1, 2019, in Apra Harbor, within the District of Guam, and  
23 elsewhere, defendant FUKUICHI, acting through its employees and agents, who acted within the  
24 scope of their employment and agency on behalf of FUKUICHI and for the benefit of FUKUICHI,

1 at least in part, did knowingly fail to maintain, and caused the failure to maintain, an Oil Record  
2 Book for the *F/V Fukuichi Maru No. 112* in which the recording of all oily bilge water and oily  
3 mixtures occurred as required. Specifically, defendant FUKUICHI, failed to record in the Oil  
4 Record Book that all oily bilge water and oily mixtures that had accumulated in the engine room  
5 of the vessel had been regularly and routinely discharged directly into the sea without using an  
6 Oil Water Separator.

7 All in violation of Title 33, United States Code, Section 1908(a); Title 18, United States  
8 Code, Section 2; and Title 33, Code of Federal Regulations, Section 151.25(a), (d) and (j).

9 **COUNT TWO**  
10 **(Act to Prevent Pollution from Ships - 33 U.S.C. § 1908(a))**

11 12. Paragraphs 1 through 10 of this Information are hereby re-alleged and incorporated  
12 by reference herein.

13 13. On or about April 1, 2019, in Apra Harbor, within the District of Guam, and  
14 elsewhere, defendant FUKUICHI, acting through its employees and agents, who acted within the  
15 scope of their employment and agency on behalf of FUKUICHI and for the benefit of FUKUICHI,  
16 at least in part, did knowingly fail to maintain, and caused the failure to maintain, a Garbage  
17 Record Book for the *F/V Fukuichi Maru No. 112* in which the recording of all discharges of  
18 garbage, including plastics, is required. Specifically, defendant FUKUICHI, failed to record in  
19 the Garbage Record Book (1) disposals of garbage to shore-side facilities; (2) discharges  
20 overboard from the vessel of fishing gear, that included plastics; and (3) proper documentation of  
21 what person was in charge of the garbage discharge operations.

22 All in violation of Title 33, United States Code, Section 1908(a); Title 18, United States  
23 Code, Section 2; and Title 33, Code of Federal Regulations, Section 155(a), (b) and (d).

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**COUNT THREE**  
**(Obstruction of an Agency Proceeding - 18 U.S.C. § 1505)**

14. Paragraphs 1 through 10 of this Information are hereby re-alleged and incorporated by reference herein.

15. On or about April 2, 2019, in Apra Harbor, within the District of Guam, and elsewhere, defendant FUKUICHI, acting through its employees and agents, who acted within the scope of their employment and agency on behalf of FUKUICHI and for the benefit of FUKUICHI, at least in part, did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede the due and proper administration of the law under a pending proceeding by the U. S. Coast Guard and the Department of Homeland Security, that is, during a vessel examination of the *F/V Fukuichi Maru No. 112* to determine the vessel's compliance with MARPOL, APPS, and United States law, defendant FUKUICHI altered twenty-six entries in the vessel's Oil Record Book. Specifically, FUKUICHI, acting through the Chief Engineer, erased twenty-six entries in the Oil Record Book that had falsely recorded oily bilge water had been processed through the Oil Water Separator above the actual maximum capacity of the Oil Water Separator and replaced them with entries that falsely recorded the Oil Water Separator was used at its regulated capacity.

All in violation of Title 18, United States Code, Section 1505.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of May, 2019.

SHAWN N. ANDERSON  
United States Attorney  
Districts of Guam and the NMI

By:

\_\_\_\_\_  
MARIVIC P. DAVID  
Assistant U.S. Attorney

By:

\_\_\_\_\_  
KENNETH E. NELSON  
Senior Trial Attorney

# Exhibit B

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11 *Attorneys for Plaintiff*

12  
13 **IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM**

14 UNITED STATES OF AMERICA,

Case No.: \_\_\_\_\_

15 Plaintiff,

16 vs.

**PLEA AGREEMENT**

17  
18 FUKUICHI GYOGYO KABUSHIKI KAISHA,

19 Defendant.

20 Pursuant to Rule 11(c)(1)(C), the United States and the defendant, Fukuichi Gyogyo  
21 Kabushiki Kaisha ("FUKUICHI" or "Defendant"), enter into the following plea agreement:

22 1. FUKUICHI agrees to waive indictment and enter a guilty plea to a three-count  
23 Information charging it with two counts of violating the Act to Prevent Pollution from Ships, in  
24

1 violation of 33 U.S.C. § 1908(a), and one count of Obstruction of an Agency Proceeding, in  
2 violation of 18 U.S.C. § 1505.

3 **TERMS**

4 2. FUKUICHI understands that the maximum sentence for a violation of the Act to  
5 Prevent Pollution from Ships is a \$500,000 fine, a special assessment fee of \$400, and five  
6 years of probation. FUKUICHI understands that the maximum sentence for Obstruction of an  
7 Agency Proceeding is a \$500,000 fine, a special assessment fee of \$400, and five years of  
8 probation.

9 2(a). FUKUICHI understands that the fine and special assessment must be paid at the  
10 time of sentencing.

11 2(b). Upon the District Court's adjudication of guilt of FUKUICHI for violations of Title  
12 33, United States Code, Section 1908(a) and Title 18, United States Code, Section 1505, the  
13 United States Attorney for the District of Guam, and the Environmental Crimes Section of the  
14 Department of Justice, will not file any further criminal charges against FUKUICHI arising out  
15 of the same transactions or occurrences to which FUKUICHI has pled.

16 2(c). Nothing in this agreement shall protect FUKUICHI in any way from prosecution  
17 for any offense committed after the date of this agreement.

18 2(d). FUKUICHI agrees to waive any objections it may have to the United States'  
19 jurisdiction over this action or to venue in the District of Guam.

20 **RULE 11(c)(1)(C) WARNINGS**

21 3. Defendant is aware that, pursuant to Federal Rule of Criminal Procedure  
22 11(c)(1)(C) the Court may accept or reject the plea agreement, or may defer its decision as to its  
23 acceptance or rejection until it has considered the pre-sentence report. If the Court rejects the plea  
24 agreement, the court shall, on the record, inform the parties of this fact, and afford Defendant an



1 opportunity to withdraw the guilty plea and advise Defendant that if Defendant persists in a guilty  
2 plea, the disposition of the case may be less favorable to Defendant than that contemplated in the  
3 plea agreement. In addition, as part of the terms and conditions of this plea agreement, the parties  
4 agree that, should the Court envision sentencing Defendant to a fine or conditions lesser than the  
5 recommendation in paragraph 8 below, the United States has the right to withdraw from the plea  
6 agreement entirely.

7 **ELEMENTS OF OFFENSES**

8 4. Defendant acknowledges that the government can prove the following essential  
9 elements of Counts One through Three as set forth in the Information:

- 10 COUNT 1: (1) Defendant was a person;  
11 (2) Defendant owned the *F/V Fukuichi Maru No. 112*, a vessel of 400 gross tons  
12 or above, which operated under the authority of a country other than the United  
13 States;  
14 (3) Defendant, acting through an agent or employee, knowingly maintained an Oil  
15 Record Book that did not accurately record the disposal of oily bilge waste and  
16 oily mixtures; and  
17 (4) The knowing failure to accurately maintain the Oil Record Book occurred in  
18 the navigable waters and jurisdiction of the United States.

19 All in violation of Title 33, United States Code, Section 1908(a); Title 33, Code of Federal  
20 Regulations, Sections 151.09(a)(5), 151.25(a), (d)(3), and (d)(5); and Title 18, United States  
21 Code, Section 2.

- 22 COUNT 2: (1) Defendant was a person;  
23 (2) Defendant owned the *F/V Fukuichi Maru No. 112*, a vessel operated under  
24 the authority of a country other than the United States;

- 1 (3) Defendant, acting through an agent or employee, knowingly maintained  
2 an inaccurate and false Garbage Record Book; and  
3 (4) The knowing failure to accurately maintain the Garbage Record Book  
4 occurred within the navigable waters and jurisdiction of the United States.

5 All in violation of Title 33, United States Code, Section 1908(a); Title 33, Code of Federal  
6 Regulations, Sections 151.51(a)(2), 151.55(a), (b), (d), and (f); and Title 18, United States Code,  
7 Section 2.

- 8 COUNT 3: (1) Defendant was a person;  
9 (2) The Defendant, acting through an agent or employee, obstructed, impeded,  
10 or endeavored to impede any pending proceeding held before any department  
11 or agency of the United States; and  
12 (3) The Defendant, acting through an agent or employee, acted corruptly.

13 All in violation of Title 18, United States Code, Section 1505.

14 **SENTENCING GUIDELINES**

15 5. The parties agree that the imposition of a fine is not governed by the Sentencing  
16 Guidelines. That is because, although the offense conduct to which Defendant is pleading guilty  
17 is covered by U.S.S.G. § 2Q1.3, "Mishandling of Other Environmental Pollutants; Recordkeeping,  
18 Tampering, and Falsification," and U.S.S.G. § 2J1.2, "Obstruction of Justice," those Guidelines  
19 are not listed under U.S.S.G. § 8C2.1, which governs criminal fines for organizations.  
20 Accordingly, pursuant to U.S.S.G. § 8C2.10, the sentence of a fine is determined by applying  
21 Title 18, United States Code, Sections 3553 and 3572.

22 **FACTUAL BASIS**

23 6. Defendant is pleading guilty because the Defendant is in fact guilty of the charges  
24 contained in Counts One through Three. In pleading guilty to these offenses, Defendant

1 acknowledges that should the case go to trial, the government could present evidence to support  
2 these charges beyond a reasonable doubt. The Factual Basis is as follows.

3 6(a). The *F/V Fukuichi Maru No. 112* is an ocean-going, stern-chute, purse-seiner  
4 fishing vessel. The vessel is 1,093 gross tons and is registered or "flagged" by Japan. FUKUICHI  
5 has owned and operated the *F/V Fukuichi Maru No. 112* since 1990. FUKUICHI is a company  
6 registered in Japan with an operating address of Kabushiki Kaisha 5-9-25, Nakaminato, Yaizu-  
7 shi, Shizuoka-ken, 425-0021 Japan. FUKUICHI also owns and operates four other fishing vessels  
8 including the *F/V Fukuichi Maru No. 83*, *F/V Fukuichi Maru No. 85*, *F/V Fukuichi Maru No. 123*,  
9 and *F/V Fukuichi Maru No. 128*.

10 6(b). The *F/V Fukuichi Maru No. 112* has a crew consisting of, among others, a Captain,  
11 Fish Master, Chief Engineer and First Officer. These crewmembers acted on behalf of  
12 FUKUICHI to carry out activities on the vessel to ensure the vessel was able to operate  
13 internationally. All of the actions taken by these crewmembers as described in this Factual Basis  
14 were within the course and scope of their employment and/or agency on behalf of FUKUICHI  
15 and for its benefit, at least in part.

16 6(c). On or about April 1, 2019, in Apra Harbor, Guam, members of the U.S. Coast  
17 Guard ("the inspectors") conducted a Port State Control examination of the *F/V Fukuichi Maru*  
18 *No. 112*. The *F/V Fukuichi Maru No. 112* had called upon Apra Harbor to effectuate repairs on  
19 its cargo refrigeration system. The inspectors discovered fifteen pollution and safety deficiencies  
20 and detained the vessel pursuant to the International Convention on the Prevention of Pollution  
21 from Ships ("MARPOL"). The inspectors discovered that there were numerous leaks of water  
22 and oil that accumulated in the engine room bilge including from service pumps, the fish hold  
23 cooling system, the diesel generators and other machinery.

24

1           6(d). The inspectors examined the vessel's Oil Water Separator ("OWS"). They asked  
2 the Chief Engineer of the vessel to demonstrate proper operation of the OWS, as is typical in a  
3 Port State Control Inspection. The Chief Engineer was unable to demonstrate proper operation of  
4 the OWS. The inspectors examined the OWS suction and discharge piping and found it to have  
5 no oily residue but it also appeared to not have been used recently. The inspectors, utilizing the  
6 services of an interpreter, questioned the Chief Engineer about the practice that he used on the  
7 vessel to manage oily bilge water and oil waste (also known as oil mixtures). The Chief Engineer  
8 stated that he had discharged oily bilge water and oil mixtures directly overboard through the  
9 emergency bilge pump system and by using buckets without using the OWS.

10           6(e). The inspectors examined the emergency bilge pump system and discovered that  
11 the emergency bilge pump valve was coated in heavy black oil. A flexible hose connected to the  
12 discharge side of the emergency bilge pump also contained oily residue. The examination of the  
13 OWS, emergency bilge piping, and the statements by the Chief Engineer, all indicated that it was  
14 a long-standing practice on the *F/V Fukuichi Maru No. 112* to discharge oily bilge water and oily  
15 mixtures directly into the sea without using an OWS or an incinerator.

16           6(f). The inspectors examined the Oil Record Book ("ORB"). The ORB consisted of  
17 one hardbound book that covered a time span of nearly thirty years. The inspectors noted that this  
18 was highly unusual and that a properly maintained ORB would span several volumes over the  
19 course of years. The inspectors noted that there were two hundred and thirty-three entries in the  
20 ORB indicating that the OWS was used, however, the throughput for the OWS recorded in the  
21 ORB exceeded the maximum throughput for the OWS that was documented on the International  
22 Oil Pollution Prevent ("IOPP") certificate. A subsequent review of the ORB later in the inspection  
23 revealed that the Chief Engineer had erased forty-two of the original entries in the ORB and  
24 replaced them with a throughput capacity that matched the IOPP certificate. The inspectors also

1 found that: (1) there were one hundred and ninety-two weekly tank soundings for the sludge tank  
2 (weekly collection) that were not logged in the ORB as required, (2) there were fifty-one shore-  
3 side disposal receipts that were not logged in the ORB as required, (3) there were seventy-one  
4 lubrication and bunker fuel deliveries that were not recorded in the ORB as required, and (4) there  
5 were seventy entries in the ORB that indicated a discharge had occurred, however, the locations  
6 of the discharges (in latitude and longitude) were not recorded as required.

7 6(g). The inspectors also examined the Garbage Record Book ("GRB"). The inspectors  
8 discovered that instead of the officer in charge of the operations signing his name, there were  
9 simply "ditto" marks. The GRB was missing sixty-seven entries for shore-side discharges dating  
10 from February 6, 2015, until April 1, 2019. The vessel also had onboard sixty garbage discharge  
11 receipts that did not indicate an estimated quantity of wastes discharged to the facility as required.  
12 During interviews of crewmembers, the inspectors discovered that animal carcasses and fishing  
13 gear, including plastics, had been discharged overboard from the vessel but not recorded in the  
14 GRB as required.

#### COOPERATION

15  
16 7. Defendant agrees to cooperate with the United States' continuing investigation.  
17 Such cooperation will consist of providing for the transportation, lodging, and per diem costs  
18 associated with any employee or former employee of FUKUICHI that the United States requests  
19 to be present in Guam for further related proceedings.

#### SENTENCING RECOMMENDATIONS

20  
21 8. The parties agree, having taken into consideration all of the sentencing factors set  
22 forth in 18 U.S.C. §§ 3553 and 3572, that the following sentence should be imposed upon  
23 Defendant:  
24

1 8(a). Having pleaded guilty to Counts One through Three of the Information,  
2 FUKUICHI shall (1) pay a criminal fine of \$1,500,000.00, payable immediately; (2) pay a special  
3 assessment of \$1,200.00, payable immediately; (3) be placed on probation for a period for five  
4 years, (4) as a condition of probation, no vessel owned or operated by FUKUICHI shall be  
5 permitted to enter the Exclusive Economic Zone, Territorial Sea, or a port or terminal belonging  
6 to or appertaining to the United States without the express permission of the U.S. Coast Guard  
7 Captain of the Port ("COTP") responsible for the area, (5) in the event FUKUICHI wants one of  
8 its owned or operated vessels to enter the Exclusive Economic Zone, Territorial Sea, or a port or  
9 terminal belonging to or appertaining to the United States, it shall implement and submit a  
10 comprehensive Environmental Compliance Plan ("ECP") and associated vessel audits to the  
11 relevant COTP thirty days prior to entry, who shall have full discretion whether to deny or permit  
12 entry. The submitted ECP must include annual audits of FUKUICHI's vessels to ensure they are  
13 in compliance with MARPOL. None of these conditions shall be construed to prevent entry of a  
14 vessel owned or operated by FUKUICHI into the United States pursuant to a valid claim of *force*  
15 *majeure*. FUKUICHI acknowledges that it has posted \$1,500,000.00 to the trust account of its  
16 attorney, Daniel J. Berman, to be used solely to pay the fine imposed by the Court for this matter.

17 **WAIVER OF APPELLATE RIGHTS**

18 9. Defendant is aware that Title 18, United States Code, Section 3742 affords  
19 Defendant the right to appeal the sentence imposed. Acknowledging this, Defendant knowingly  
20 waives its right to appeal any sentence within the maximum provided in the statute(s) of  
21 conviction or the manner in which that sentence was determined, on the grounds set forth in Title  
22 18, United States Code, Section 3742(a) or on any ground whatever, in exchange for the  
23 concessions made by the United States in this plea agreement. In addition, Defendant expressly  
24 waives the right to petition under Title 28, United States Code, Section 2255, with the exception

1 of a claim of ineffective assistance of counsel. Defendant has discussed these rights with its  
2 attorneys. Defendant understands the rights being waived, and Defendant waives these rights  
3 knowingly, intelligently, and voluntarily. This agreement does not affect the rights or obligations  
4 of the United States as set forth in Title 18, United States Code, Section 3742(b).

5 9(a). The parties reserve the right to allocute fully and will recommend that the sentence  
6 be in accordance with this plea agreement.

7 **VICTIM RESTITUTION**

8 10. Defendant shall make full restitution to the victims regarding the crimes charged.  
9 Should the district court identify victim(s) and determine that restitution is due, the district court  
10 may require Defendant to make the restitution payable at once or on a payment schedule.

11 10(a). Defendant agrees that, while the district court sets the payment schedule, this  
12 schedule may be exceeded if and when Defendant's financial circumstances change. In that event,  
13 and consistent with its statutory obligations, the United States may take any and all actions  
14 necessary to collect the maximum amount of restitution in the most expeditious manner available.

15 10(b). Defendant further understands and agrees that the United States has the  
16 obligation and the right to pursue any legal means, including, but not limited to, submission of  
17 the debt to the Treasury Offset Program, to collect the full amount of restitution.

18 10(c). Based upon the information known to the parties at the time of execution of this  
19 plea agreement, there are no known victims.

20 **CORPORATE RESOLUTION**

21 11. Defendant must present in open court the original corporate resolution duly  
22 enacted by Defendant's Board of Directors authorizing the entry into this plea agreement and  
23 pledging to abide by all of its terms and the probationary terms ordered by the Court.

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**CONCLUSION**

13. There are no other agreements between the United States Attorney for the District of Guam, the Environmental Crimes Section of the Department of Justice, and Defendant. Defendant enters this agreement knowingly, voluntarily, and upon advice of counsel.

14.

RESPECTFULLY SUBMITTED this \_\_\_ day of May, 2019.

SHAWN N. ANDERSON  
United States Attorney  
Districts of Guam and the NMI

By: \_\_\_\_\_  
MARIVIC P. DAVID  
Assistant U.S. Attorney

By: \_\_\_\_\_  
KENNETH E. NELSON  
Senior Trial Attorney

\_\_\_\_\_  
Corporate Representative  
Fukuichi Gyogyo Kabushiki Kaisha

\_\_\_\_\_  
Daniel J. Berman  
Attorney for Defendant