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FILED

JUL 13 2011

CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY _____ DEPUTY CLERK

BB

12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,)
 16)
 17 Plaintiff,)
 18)
 18 v.)
 19)
 19 ROBERT ROSE,)
 20)
 20 Defendant.)

2: 11 CR 00292 WBS

No.

PLEA and COOPERATION AGREEMENT

I.

INTRODUCTION

25 A. Scope of Agreement: The Information to be filed in this
 26 case charges the defendant, ROBERT ROSE, with one count of
 27 participating in a conspiracy to suppress and restrain
 28 competition by rigging bids to obtain selected real estate

1 offered at San Joaquin County, California public real estate
2 auctions in the Eastern District of California in unreasonable
3 restraint of interstate trade and commerce, in violation of the
4 Sherman Act, 15 U.S.C. § 1, and with one count of conspiracy to
5 commit mail fraud, in violation of 18 U.S.C. § 1349. This
6 document contains the complete Plea and Cooperation Agreement
7 between the United States Attorney's Office for the Eastern
8 District of California and the United States Department of
9 Justice, Antitrust Division (collectively the "government"), and
10 the defendant regarding this case. This Plea and Cooperation
11 Agreement is limited to the United States Attorney's Office for
12 the Eastern District of California and the United States
13 Department of Justice, Antitrust Division, and cannot bind any
14 other federal, state, or local prosecuting, administrative, or
15 regulatory authorities.
16
17

18 B. Court Not a Party: The Court is not a party to this
19 Plea and Cooperation Agreement. Sentencing is a matter solely
20 within the discretion of the Court, the Court is under no
21 obligation to accept any recommendations made by the government,
22 and the Court may in its discretion impose any sentence it deems
23 appropriate, up to and including the statutory maximum stated in
24 this Plea and Cooperation Agreement. If the Court should impose
25 any sentence up to the maximum established by the statute, the
26 defendant cannot, for that reason alone, withdraw his guilty
27 plea, and he will remain bound to fulfill all of the obligations
28

1 under this Plea and Cooperation Agreement. The defendant
2 understands that neither the government, defense counsel, nor the
3 Court can make a binding prediction or promise regarding the
4 sentence he will receive.

5
6 II.

7 DEFENDANT'S OBLIGATIONS

8 A. Waiver of Indictment and Guilty Plea: The defendant
9 will waive indictment by grand jury, waive venue, and plead
10 guilty to a two-count Information, substantially in the form
11 attached hereto as Exhibit B, charging him with conspiring to rig
12 bids in violation of 15 U.S.C. § 1 and conspiracy to commit mail
13 fraud in violation of 18 U.S.C. § 1349. The defendant agrees
14 that he is, in fact, guilty of those charges and that the facts
15 set forth in the Factual Basis attached hereto as Exhibit A are
16 true and accurate.

17
18 B. Restitution: The Mandatory Victim Restitution Act
19 requires the Court to order restitution to the victims of certain
20 offenses. Payment should be made at such times and in such
21 amounts as ordered by the Court, and should be by cashier's or
22 certified check made payable to the Clerk of the Court. The
23 government and defendant agree to recommend that the Court order
24 defendant to pay restitution in the amount of \$24,000. The
25 defendant understands that this Plea and Cooperation Agreement is
26 voidable by the government if he fails to pay the restitution as
27 ordered by the Court. Defendant further agrees that he will not
28

1 seek to discharge any restitution obligation or any part of such
2 obligation in any bankruptcy proceeding.

3 **C. Special Assessment:** The defendant agrees to pay a
4 special assessment of \$100 for each count (total of \$200)
5 immediately before the sentencing hearing by delivering a check
6 or money order to the United States Probation Office payable to
7 the United States District Court.
8

9 **D. Agreement to Cooperate:** The defendant agrees to
10 cooperate fully with the government and any other federal, state,
11 or local law enforcement agency, as directed by the government.
12 As used in this Agreement, "cooperation" requires the defendant:
13 (1) to respond truthfully and completely to all questions,
14 whether in interviews, in correspondence, telephone
15 conversations, before a grand jury, or at any trial or other
16 court proceeding; (2) to attend all meetings, grand jury
17 sessions, trials, and other proceedings at which the defendant's
18 presence is requested by the government or compelled by subpoena
19 or court order; (3) to produce voluntarily any and all documents,
20 records, or other tangible evidence requested by the government;
21 (4) not to participate in any criminal activity while cooperating
22 with the government; and (5) to disclose to the government the
23 existence and status of all money, property, or assets, of any
24 kind, derived from or acquired as a result of, or used to
25 facilitate the commission of, the defendant's illegal activities
26 or the illegal activities of any conspirators.
27
28

1 If the defendant commits any crimes or if any of the
2 defendant's statements or testimony prove to be knowingly false,
3 misleading, or materially incomplete, or if the defendant
4 otherwise violates this Plea and Cooperation Agreement in any
5 way, the government will no longer be bound by its
6 representations to the defendant concerning the limits on
7 criminal prosecution and sentencing as set forth herein. The
8 determination whether the defendant has violated the Plea and
9 Cooperation Agreement will be under a preponderance-of-the-
10 evidence standard. If the defendant violates the Plea and
11 Cooperation Agreement, he shall thereafter be subject to
12 prosecution for any federal criminal violation of which the
13 government has knowledge, including but not limited to perjury,
14 false statements, and obstruction of justice. Because
15 disclosures pursuant to this Agreement will constitute a waiver
16 of the Fifth Amendment privilege against compulsory self-
17 incrimination, any such prosecution may be premised on statements
18 and/or information provided by the defendant. Moreover, any
19 prosecutions that are not time-barred by the applicable statute
20 of limitations as of the date of this Agreement may be commenced
21 in accordance with this paragraph, notwithstanding the expiration
22 of the statute of limitations between the signing of this
23 Agreement and the commencement of any such prosecutions. The
24 defendant agrees to waive all defenses based on the statute of
25 limitations or delay of prosecution with respect to any

1 prosecutions that are not time-barred as of the date of this
2 Agreement.

3 If it is determined that the defendant has violated any
4 provision of this Agreement or if the defendant successfully
5 moves to withdraw his plea: (1) all statements made by the
6 defendant to the government or other designated law enforcement
7 agents, or any testimony given by the defendant before a grand
8 jury or other tribunal, whether before or after this Agreement,
9 shall be admissible in evidence in any criminal, civil, or
10 administrative proceedings hereafter brought against the
11 defendant; and (2) the defendant shall assert no claim under the
12 United States Constitution, any statute, Rule 11(f) of the
13 Federal Rules of Criminal Procedure, Rule 410 of the Federal
14 Rules of Evidence, or any other federal rule, that statements
15 made by the defendant before or after this Agreement, or any
16 leads derived therefrom, should be suppressed. By signing this
17 Agreement, the defendant waives any and all rights in the
18 foregoing respects.
19

20
21 E. Payment of Fine: The defendant agrees to pay a criminal
22 fine of \$20,000 if so ordered by the Court. Defendant
23 understands that the criminal fine ordered by the Court may be
24 based upon the defendant's ability to pay a criminal fine in
25 addition to restitution as agreed upon and set forth in this Plea
26 and Cooperation Agreement and as determined by the United States
27 Probation Office. The government's recommendation with respect
28

1 to any such criminal fine is set forth in paragraph III. D. of
2 this Plea and Cooperation Agreement.

3
4 III.

5 THE GOVERNMENT'S OBLIGATIONS

6 A. Incarceration Range: The government will recommend that
7 the defendant be sentenced to the bottom of the applicable
8 Guidelines range for his offense, as determined by the United
9 States Probation Office.

10 B. Acceptance of Responsibility: The government agrees
11 that a two-level reduction in defendant's offense level for his
12 full and clear demonstration of acceptance of responsibility is
13 appropriate under United States Sentencing Guidelines (U.S.S.G.)
14 § 3E1.1, will not oppose such a reduction, and will so move under
15 § 3E1.1, so long as the defendant pleads guilty, meets with and
16 assists the probation officer in the preparation of the pre-
17 sentence report, is truthful and candid with the probation
18 officer and the Court, and does not otherwise engage in conduct
19 that constitutes obstruction of justice within the meaning of
20 U.S.S.G. § 3C1.1, either in the preparation of the pre-sentence
21 report or during the sentencing proceeding.

22 C. Reduction of Sentence for Cooperation: The government
23 agrees to recommend at the time of sentencing that the
24 defendant's sentence of imprisonment be reduced to reflect his
25 substantial assistance to the government in the investigation and
26 prosecution of others, pursuant to U.S.S.G. § 5K1.1. The
27
28

1 defendant understands that he must comply with paragraph II. D.
2 of this Plea and Cooperation Agreement. The defendant
3 understands that the government's recommended reduction in his
4 sentence will depend upon the level of assistance the government
5 determines that the defendant has provided. The defendant
6 further understands that a motion pursuant to U.S.S.G. § 5K1.1 is
7 only a recommendation and is not binding on the Court.
8

9 Other than as set forth above, the government agrees that
10 any incriminating information provided by the defendant during
11 his cooperation will not be used in determining the applicable
12 Guidelines range in his case, pursuant to U.S.S.G. § 1B1.8.
13

14 D. Fine: The government agrees to recommend that the
15 defendant be ordered to pay a fine of \$20,000, pursuant to
16 U.S.S.G. § 2R1.1(c)(1), or other amount as recommended by the
17 United States Probation Office.

18 E. Other Administrative Action: The defendant understands
19 that he may be subject to administrative action by federal or
20 state agencies other than the United States Attorney's Office and
21 United States Department of Justice, Antitrust Division, based
22 upon the conviction resulting from this Plea Agreement, and that
23 this Plea Agreement in no way controls whatever action, if any,
24 other agencies may take. However, the United States agrees that,
25 if requested, it will advise appropriate officials of any
26 governmental agency considering such administrative action of the
27 fact, manner, and extent of the cooperation of the defendant as a
28

1 matter for that agency to consider before determining what
2 administrative action, if any, to take.

3 IV.

4 ELEMENTS OF THE OFFENSE

5 Had this case gone to trial, the government would have to
6 prove beyond a reasonable doubt the following elements:
7

8 For Count One, Sherman Act:

9 First, that the defendant entered into a conspiracy;

10 Second, that the conspiracy was an unreasonable restraint of
11 trade; and

12 Third, that the conspiracy was in or affected interstate
13 commerce in the United States.

14 For Count Two, Conspiracy to Commit Mail Fraud:

15 First, that the defendant knowingly devised or participated
16 in a conspiracy to defraud or to obtain money or property by
17 means of materially false pretenses, representations, or
18 promises;
19

20 Second, the defendant knew that the scheme was deceptive or
21 that the pretenses, representations, or promises were false;

22 Third, that the defendant did so with the intent to defraud;
23 and
24

25 Fourth, for the purpose of carrying out the scheme or
26 attempting to do so, the defendant knowingly used and caused to
27 be used the United States mails or private or commercial carrier
28 in the manner charged.

V.

MAXIMUM SENTENCE

1
2
3 A. Maximum Penalty: For Count One, the maximum sentence the
4 Court can impose for a violation of 15 U.S.C. § 1 is ten years
5 incarceration; a fine in an amount equal to the greatest of (1)
6 \$1,000,000, (2) twice the gross pecuniary gain the conspirators
7 derived from the crime, or (3) twice the gross pecuniary loss
8 caused to the victims of the crime by the conspirators; a three-
9 year period of supervised release; and a special assessment of
10 \$100. For Count Two, the maximum sentence the Court can impose
11 for a violation of 18 U.S.C. § 1349 is 30 years incarceration; a
12 fine of \$1,000,000; a five-year period of supervised release; and
13 a special assessment of \$100.
14
15

16 B. Violations of Supervised Release: The defendant
17 understands that if he violates a condition of supervised release
18 at any time during the term of supervised release, the Court may
19 revoke the term of supervised release and require the defendant
20 to serve up to two additional years of imprisonment.
21

VI.

SENTENCING DETERMINATION

22
23 A. Statutory Authority: The defendant understands that the
24 Court must consult the Federal Sentencing Guidelines (as
25 promulgated by the Sentencing Commission pursuant to the
26 Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28
27 U.S.C. §§ 991-998, and as modified by United States v. Booker and
28

1 United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738 (2005)) and
 2 must take them into account when determining a final sentence.
 3 The defendant understands that the Court will determine a non-
 4 binding and advisory Guideline sentencing range for this case
 5 pursuant to the Sentencing Guidelines. The defendant further
 6 understands that the Court will consider whether there is a basis
 7 for departure from the Guideline sentencing range (either above
 8 or below the Guideline sentencing range) because there exists an
 9 aggravating or mitigating circumstance of a kind, or to a degree,
 10 not adequately taken into consideration by the Sentencing
 11 Commission in formulating the Guidelines. The defendant further
 12 understands that the Court, after consultation and consideration
 13 of the Sentencing Guidelines, must impose a sentence that is
 14 reasonable in light of the factors set forth in 18 U.S.C.
 15 § 3553 (a).
 16

17
 18 **B. Stipulations Affecting Guidelines Calculations:** The
 19 government and the defendant agree that there is no material
 20 dispute as to the following Sentencing Guidelines variables and
 21 therefore stipulate and agree to the following:
 22

23 For Count One:

24	§ 2R1.1 (a)	Base Offense Level	12
25	(b) (1)	Bid Rigging	+1
26	(b) (2) (A)	Volume of commerce	+2
27		Total	15
28	(c) (1)	Fine 1 - 5% of \$1.132 million	

1 For Count Two:

2	§ 2B1.1(a) (1) Base Offense Level	7
3	(b) (1) (D) Loss > \$10,000	+4
4	Total	11

5 The Guidelines calculation results in an offense level of 15, for
6 a jail term of 18 to 24 months and a fine between \$11,320 and
7 \$56,660.
8

9 1. Acceptance of Responsibility: Pursuant to § 3E1.1
10 and as described in more detail in paragraph III. B. above, the
11 defendant's total offense level is decreased by two levels
12 because of his acceptance of responsibility. The Adjusted Total
13 Offense Level is therefore 13.
14

15 2. Criminal History: The parties agree that the
16 defendant's criminal history is to be determined by the United
17 States Probation Office.

18 3. Departures or Other Enhancements or Reductions:
19 The parties stipulate and agree that they will not seek or argue
20 in support of any other specific offense characteristics, Chapter
21 Three adjustments, departures, or cross-references, other than
22 those contemplated in the foregoing stipulations. Defense
23 counsel may argue for a variance or deviation from the Sentencing
24 Guidelines under 18 U.S.C. § 3553(a). The government reserves
25 its right to oppose such deviation or variance. If either party
26 breaches this provision, the other party shall be relieved of all
27 of its obligations under this Plea and Cooperation Agreement.
28

VII.

WAIVERS

1
2
3 A. Waiver of Constitutional Rights: The defendant
4 understands that by pleading guilty he is waiving the following
5 constitutional rights: (a) to plead not guilty and to persist in
6 that plea if already made; (b) to be tried by a jury; (c) to be
7 assisted at trial by an attorney, who would be appointed if
8 necessary; (d) to subpoena witnesses to testify on his behalf;
9 (e) to confront and cross-examine witnesses against him; and
10 (f) not to be compelled to incriminate himself.
11

12 B. Waiver of Appeal and Collateral Attack: The defendant
13 understands that the law gives him a right to appeal his
14 conviction and sentence. He agrees as part of his plea, however,
15 to give up the right to appeal the conviction and the right to
16 appeal any aspect of the sentence imposed in this case so long as
17 his sentence is no longer than the top of the Sentencing
18 Guidelines range determined by the Court, consistent with the
19 stipulations set forth above about the Sentencing Guidelines
20 variables.
21

22 Regardless of the sentence he receives, the defendant also
23 gives up any right he may have to bring a post-appeal attack on
24 his conviction or his sentence. He specifically agrees not to
25 file a motion under 28 U.S.C. § 2255 or § 2241 attacking his
26 conviction or sentence.
27

28 If the defendant ever attempts to vacate his plea, dismiss

1 the underlying charges, or reduce or set aside his sentence on
2 any of the counts to which he is pleading guilty, the government
3 shall have the right to: (1) prosecute the defendant on any of
4 the counts to which he pleaded guilty; (2) reinstate any counts
5 that may be dismissed pursuant to this Plea and Cooperation
6 Agreement; and (3) file any new charges that would otherwise be
7 barred by this Plea and Cooperation Agreement. The decision to
8 pursue any or all of these options is solely in the discretion of
9 the United States Attorney's Office and the Department of
10 Justice, Antitrust Division. By signing this Plea and
11 Cooperation Agreement, the defendant agrees to waive any
12 objections, motions, and defenses he might have to the
13 government's decision. In particular, he agrees not to raise any
14 objections based on the passage of time with respect to such
15 counts, including, but not limited to, any statutes of limitation
16 or any objections based on the Speedy Trial Act or the Speedy
17 Trial Clause of the Sixth Amendment.
18
19

20 C. Waiver of Attorneys' Fees and Costs: The defendant
21 agrees to waive all rights under the "Hyde Amendment," Section
22 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or
23 other litigation expenses in connection with the investigation
24 and prosecution of all charges in the above-captioned matter and
25 of any related allegations.
26

27 \\
28 \\
29

VIII.

ENTIRE PLEA AND COOPERATION AGREEMENT

Other than this Plea and Cooperation Agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the government.

IX.

APPROVALS AND SIGNATURES

A. Defense Counsel: I have read this Plea and Cooperation Agreement and have discussed it fully with my client. The Plea and Cooperation Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this Plea and Cooperation Agreement.

DATED: 6-24-11

Ismail J. Ramsey /IRKP
ISMAIL RAMSEY
Attorney for Defendant

B. Defendant: I have read this Plea and Cooperation Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or

1 inducements have been made to me, other than those contained in
2 this Plea and Cooperation Agreement. In addition, no one has
3 threatened or forced me in any way to enter into this Plea and
4 Cooperation Agreement. Finally, I am satisfied with the
5 representation of my attorney in this case.
6

7
8 DATED: 6-24-2011


ROBERT ROSE

9
10 C. Attorneys for the Government: The undersigned accept
11 and agree to this Plea and Cooperation Agreement on behalf of the
12 government.
13

14 DATED: July 11, 2011

BENJAMIN B. WAGNER
United States Attorney

15
16
17 By: 

RUSSELL L. CARLBERG
Assistant U.S. Attorney

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19
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21 CHRISTINE A. VARNEY
Assistant Attorney General

22
23
24 By: 
for

ANNA TRYON PLETCHER
TAL S. MILDER
RICHARD B. COHEN
Trial Attorneys
U.S. Department of Justice
Antitrust Division

1 EXHIBIT "A"

2 Factual Basis for Plea

3 Bid Rigging

4
5 At trial, the government would prove the following facts beyond a reasonable doubt:

6
7 Beginning in or about August 2009 and continuing until in or about October 2009 (relevant period), defendant participated in a conspiracy to rig bids at public real estate auctions held in San
8 Joaquin County, California, located in the Eastern District of California. The primary purpose of this conspiracy was to
9 suppress and restrain competition and obtain selected real estate offered at San Joaquin County public auctions at non-competitive
10 prices. During the relevant period, defendant and his co-conspirators reached agreements not to bid against one another
11 and to allocate properties among themselves. To carry out their agreements, defendant and his co-conspirators refrained from
12 bidding or refrained from bidding up the price for auctioned properties. In many instances, defendant and his co-conspirators
13 held private auctions, open only to members of the conspiracy, to rebid the property. Defendant and his co-conspirators awarded
14 the property to the conspirators who submitted the highest bid at the private auctions. Defendant and his co-conspirators
15 distributed the proceeds of the private auctions as payoffs to the other, unsuccessful bidders in the private auction, based
16 upon a predetermined formula agreed upon by the members of the conspiracy, for refraining from bidding on the property at the
17 public auction.

18
19 During the relevant period, the business activities of the defendant and co-conspirators were within the flow of, and
20 substantially affected, interstate trade and commerce. For example, mortgage holders located in states other than California
21 held mortgages, appointed trustees, and received proceeds from the public auctions that were subject to the bid-rigging
22 agreement.

23
24 Conspiracy to Commit Mail Fraud

25 Beginning in or about August 2009 and continuing until in or about October 2009 (relevant period), defendant knowingly devised
26 or participated in a conspiracy to defraud or to obtain money or property by means of materially false pretenses, representations,
27 or promises from the mortgage holders and owners of properties that were being sold at public real estate foreclosure auctions
28 in the Eastern District of California. That conspiracy to

1 defraud consisted of suppressing competition at the public
2 auction of properties by agreeing not to bid against one another
3 at the public auction, by acquiring the property at a lower price
4 than would have resulted from a fully competitive auction, and by
5 holding a second, private auction and dividing the profits of the
6 scheme (the difference between the public and private auction
7 prices) among themselves. In other words, the participants
8 intentionally manipulated the sales price of properties, causing
9 false, artificially low sales prices to be reported and paid to
10 victims of the scheme.

11 The defendant and others, for the purpose of executing the
12 conspiracy described above and attempting to do so, knowingly
13 used and caused to be used the United States mails or private or
14 commercial carrier. For example, trustees and government
15 agencies used the United States mail to transmit grant deeds and
16 other title documents to participants in the conspiracy to
17 defraud. These mailings were foreseeable to defendant in the
18 ordinary course of business.
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