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SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

14 UNITED STATES OF AMERICA

15 v.

16 DAVID MARGEN,  
17 Defendant.

No. CR 11-00425 PJH

**PLEA AGREEMENT**

18 The United States of America and David Margen (“defendant”) hereby enter into the  
19 following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal  
20 Procedure (“Fed. R. Crim. P.”):

21 RIGHTS OF DEFENDANT

- 22 1. The defendant understands his rights:  
23 (a) to be represented by an attorney;  
24 (b) to be charged by Indictment;  
25 (c) to plead not guilty to any criminal charge brought against him;  
26 (d) to have a trial by jury, at which he would be presumed not guilty of the  
27 charge and the United States would have to prove every essential element of the charged offense  
28 beyond a reasonable doubt for him to be found guilty;

1 (e) to confront and cross-examine witnesses against him and to subpoena  
2 witnesses in his defense at trial;

3 (f) not to be compelled to incriminate himself;

4 (g) to appeal his conviction, if he is found guilty; and

5 (h) to appeal the imposition of sentence against him.

6 AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

7 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph  
8 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any  
9 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal  
10 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or § 2255, that challenges the  
11 sentence imposed by the Court if that sentence is consistent with or below the United States  
12 Sentencing Guidelines range stipulated by the parties in Paragraph 8 of this Plea Agreement,  
13 regardless of how the sentence is determined by the Court. This Agreement does not affect the  
14 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this  
15 paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may  
16 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of  
17 counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive  
18 indictment and plead guilty to Counts One and Three of the Information filed in this case. Count  
19 One of the Information charges the defendant with participating in a conspiracy to suppress and  
20 restrain competition by rigging bids to obtain selected properties offered at public real estate  
21 foreclosure auctions in Alameda County in the Northern District of California (the “Alameda  
22 County selected properties”), in unreasonable restraint of interstate trade and commerce, in  
23 violation of the Sherman Antitrust Act, 15 U.S.C. § 1, beginning as early as March 2009 and  
24 continuing until in or about June 2010 (the “first relevant period”). Count Three of the  
25 Information charges the defendant with participating in a conspiracy to suppress and restrain  
26 competition by rigging a bid to obtain a selected property offered at a public real estate  
27 foreclosure auction in Contra Costa County in the Northern District of California (the “Contra  
28 Costa County selected property”), in unreasonable restraint of interstate trade and commerce, in

1 violation of the Sherman Antitrust Act, 15 U.S.C. § 1, in or about March 2009 (the “second  
2 relevant period”).

3 3. The defendant will plead guilty to the criminal charges described in Paragraph 2,  
4 above, pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to  
5 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

6 FACTUAL BASIS FOR OFFENSES CHARGED

7 4. The defendant agrees that he is guilty of the offenses to which he will plead guilty  
8 and agrees that the following facts are true:

9 (a) As to Count One of the Information:

10 During the first relevant period, the defendant participated in a conspiracy to rig bids to  
11 obtain the Alameda County selected properties. The primary purpose of this conspiracy was to  
12 suppress and restrain competition and obtain the Alameda County selected properties at  
13 noncompetitive prices. During the first relevant period, the defendant and his co-conspirators  
14 agreed not to bid against one another and to allocate selected real estate among themselves. To  
15 carry out their conspiracy, the defendant and his co-conspirators refrained from bidding on or  
16 refrained from bidding up the price for the Alameda County selected properties. In many  
17 instances, the defendant and his co-conspirators held private auctions, open only to members of  
18 the conspiracy, to rebid this real estate. The defendant and his co-conspirators awarded this real  
19 estate to the conspirator who submitted the highest bid at the private auctions. The defendant  
20 and his co-conspirators distributed the proceeds of the private auctions as payoffs to the other,  
21 unsuccessful bidders in the private auctions, based upon a predetermined formula agreed upon by  
22 the members of the conspiracy, for refraining from bidding on these properties at the public  
23 auction.

24 During the first relevant period, the business activities of the defendant and his  
25 co-conspirators were within the flow of, and substantially affected, interstate trade and  
26 commerce. For example, mortgage holders located in states other than California received  
27 proceeds from the public real estate foreclosure auctions that were subject to the bid-rigging  
28 conspiracy.

1           During the first relevant period, the conspiratorial activities described above took place in  
2 the Northern District of California, and the real estate that was the subject of this conspiracy was  
3 located in this District.

4           (b)     As to Count Three of the Information:

5           During the second relevant period, the defendant participated in a conspiracy to rig a bid  
6 to obtain the Contra Costa County selected property. The primary purpose of this conspiracy  
7 was to suppress and restrain competition and to obtain the selected real estate offered at the  
8 Contra Costa County public real estate foreclosure auction at a noncompetitive price. During the  
9 second relevant period, the defendant and his co-conspirators agreed not to bid against one  
10 another and to allocate the selected real estate among themselves. To carry out their conspiracy,  
11 the defendant and his co-conspirators refrained from bidding on or refrained from bidding up the  
12 price for the selected auctioned real estate. The defendant and his co-conspirators held a private  
13 auction, open only to members of the conspiracy, to rebid this real estate. The defendant and his  
14 co-conspirators awarded this real estate to the conspirator who submitted the highest bid at the  
15 private auction. The defendant and his co-conspirators distributed the proceeds of the private  
16 auction as payoffs to the other, unsuccessful bidders in the private auction, based upon a  
17 predetermined formula agreed upon by the members of the conspiracy, for refraining from  
18 bidding on this real estate at the public auction.

19           During the second relevant period, the business activities of the defendant and his  
20 co-conspirators were within the flow of, and substantially affected, interstate trade and  
21 commerce. For example, mortgage holders located in states other than California received  
22 proceeds from the public real estate foreclosure auction that was subject to the bid-rigging  
23 conspiracy.

24           During the second relevant period, the conspiratorial activities described above took  
25 place in the Northern District of California, and the real estate that was the subject of this  
26 conspiracy was located in this District.

1 POSSIBLE MAXIMUM SENTENCE

2 5. The defendant understands that the statutory maximum penalty which may be  
3 imposed against him upon conviction for a violation of Section One of the Sherman Antitrust  
4 Act, 15 U.S.C. § 1, is:

5 (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);

6 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the  
7 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary  
8 loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b)  
9 and (d)); and

10 (c) a term of supervised release of three (3) years following any term of  
11 imprisonment. If the defendant violates any condition of supervised release, the defendant could  
12 be required to serve up to an additional two (2) years in prison (18 U.S.C. § 3559(a)(3); 18  
13 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,”  
14 “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

15 6. In addition, the defendant understands that:

16 (a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3663(a)(3), the Court may  
17 order him to pay restitution to the victims of the offense; and

18 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the  
19 defendant to pay a \$100 special assessment upon conviction for each charge, totaling \$200.

20 SENTENCING GUIDELINES

21 7. The defendant understands that the Sentencing Guidelines are advisory, not  
22 mandatory, but that the Court must consider, in determining and imposing sentence, the  
23 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater  
24 punishment than the Manual in effect on the last date that the offense of conviction was  
25 committed, in which case the Court must consider the Guidelines Manual in effect on the last  
26 date that the offense of conviction was committed. The Court must also consider the other  
27 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant  
28 understands that the Guidelines determinations will be made by the Court by a preponderance-

1 of-the-evidence standard. The defendant understands that although the Court is not ultimately  
 2 bound to impose a sentence within the applicable Guidelines range, its sentence must be  
 3 reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.  
 4 § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating  
 5 information that the defendant provides to the United States pursuant to this Plea Agreement will  
 6 not be used to increase the volume of affected commerce attributable to the defendant or in  
 7 determining the defendant's applicable Guidelines range, except to the extent provided in  
 8 U.S.S.G. § 1B1.8(b).

#### 9 SENTENCING AGREEMENT

10 8. The United States and the defendant agree that the following Sentencing  
 11 Guidelines apply to Counts One and Three (15 U.S.C. § 1). Counts One and Three are grouped  
 12 under U.S.S.G § 3D1.2(d) by aggregating the volume of commerce attributable to the defendant  
 13 in both counties, for a total of \$6.1 million.

14	(a)	Base Offense Level, U.S.S.G. § 2R1.1(a):	12
15	(b)	Conduct involved agreement to submit noncompetitive bids, U.S.S.G. § 2R1.1(b)(1):	+1
16			
17	(c)	Volume of commerce (stipulated to be \$6.1 million), U.S.S.G. § 2R1.1(b)(2)(A):	+2
18			
19		Total:	15
20			
21		Fine calculated as one to five percent of the volume of commerce (stipulated to be \$6.1 million), but not less than \$20,000, U.S.S.G. § 2R1.1(c)(1):	\$61,000 to \$305,000
22			

23 9. The United States agrees that it will make a motion, pursuant to U.S.S.G. § 3E1.1,  
 24 for a downward adjustment of two levels for acceptance of responsibility due to the defendant's  
 25 timely notification of his intention to enter a guilty plea. Therefore, the total Guidelines  
 26 calculations result in an adjusted offense level of 13, for a jail term of 12 to 18 months and a fine  
 27 of \$61,000 to \$305,000. The United States agrees to recommend a fine between \$7,500 and  
 28 \$75,000.

1           10.     The defendant understands that the Court will order him to pay a special  
2 assessment of \$100 per count (\$200 total) pursuant to 18 U.S.C. § 3013(a)(2)(A), in addition to  
3 any fine imposed. The parties agree that there exists no aggravating or mitigating circumstance  
4 of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing  
5 Commission in formulating the Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0.

6           11.     The government and the defendant agree to recommend that the Court order the  
7 defendant to pay restitution in the amount of \$63,114, pursuant to U.S.S.G. § 5E1.1(a). The  
8 defendant understands that this Plea Agreement is voidable by the government if he fails to pay  
9 the restitution as ordered by the Court. The defendant further agrees that he will not seek to  
10 discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

11           12.     The United States and the defendant are not aware of any information that would  
12 affect the defendant's Criminal History Category. If no other information were discovered, the  
13 defendant's Criminal History Category would be I. The parties understand that the defendant's  
14 Criminal History Category is determined by the Court.

15           13.     The defendant understands that the sentence to be imposed on him is within the  
16 sole discretion of the sentencing judge. The United States cannot and does not make any  
17 promises or representations as to what sentence the defendant will receive. The United States  
18 will inform the Probation Office and the Court of (a) this Agreement, (b) the nature and extent of  
19 the defendant's activities in this case and all other activities of the defendant that the United  
20 States deems relevant to sentencing, and (c) the nature and extent of the defendant's cooperation  
21 with the United States. In so doing, the United States may use any information it deems relevant,  
22 including information provided by the defendant both prior and subsequent to the signing of this  
23 Agreement. The United States reserves the right to make any statement to the Court or the  
24 Probation Office concerning the nature of the criminal violations charged in the Information, the  
25 participation of the defendant therein, and any other facts or circumstances that it deems relevant.  
26 The United States also reserves the right to comment on or to correct any representation made by  
27 or on behalf of the defendant and to supply any other information that the Court may require.

1           14.     If the United States determines that the defendant has provided substantial  
2 assistance in any Federal Proceeding, as defined in Paragraph 17 of this Plea Agreement, and has  
3 otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion,  
4 pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to  
5 that determination and requesting the Court to sentence the defendant in light of the factors set  
6 forth in U.S.S.G. § 5K1.1(a)(1)-(5). The defendant acknowledges that the decision whether he  
7 has provided substantial assistance in any Federal Proceeding and has otherwise complied with  
8 the terms of this Plea Agreement is within the sole discretion of the United States. It is  
9 understood that, should the United States determine that the defendant has not provided  
10 substantial assistance in any Federal Proceeding, or should the United States determine that the  
11 defendant has violated any provision of this Plea Agreement, such a determination will release  
12 the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not  
13 entitle the defendant to withdraw his guilty plea once it has been entered. The defendant further  
14 understands that, whether or not the United States files a motion pursuant to U.S.S.G. § 5K1.1,  
15 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

16           15.     Subject to the full, truthful, and continuing cooperation of the defendant, as  
17 defined in Paragraph 17 of this Plea Agreement, and prior to sentencing in this case, the United  
18 States will fully advise the Court and the Probation Office of the fact, manner, and extent of the  
19 defendant's cooperation and his commitment to prospective cooperation with the United States'  
20 investigation and prosecutions, all material facts relating to the defendant's involvement in the  
21 charged offenses, and all other relevant conduct. To enable the Court to have the benefit of all  
22 relevant sentencing information, the United States may request, and the defendant will not  
23 oppose, that sentencing be postponed until the defendant's cooperation is complete.

24           16.     The United States and the defendant understand that the Court retains complete  
25 discretion to accept or reject either party's sentencing recommendation. The defendant  
26 understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a  
27 sentence consistent with either party's sentencing recommendation, he nevertheless has no right  
28 to withdraw his plea of guilty.



DEFENDANT’S COOPERATION

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17. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the purchase of properties at public real estate foreclosure auctions in the Northern District of California, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (“Federal Proceeding”). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine in the possession, custody, or control of the defendant, that are requested by attorneys and agents of the United States in connection with any Federal Proceeding;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States in connection with any Federal Proceeding;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to commit such offenses;

(d) otherwise voluntarily providing the United States with any material or information not requested in (a) - (c) of this paragraph and not protected under the attorney-client privilege or work-product doctrine that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement

1 or declaration in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C.  
2 §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

3 GOVERNMENT'S AGREEMENT

4 18. Subject to the full, truthful, and continuing cooperation of the defendant, as  
5 defined in Paragraph 17 of this Plea Agreement, and upon the Court's acceptance of the guilty  
6 plea called for by this Plea Agreement and the imposition of sentence, the United States agrees  
7 that it will not bring further criminal charges against the defendant for any act or offense  
8 committed before the date of signature of this Plea Agreement that was undertaken in furtherance  
9 of an antitrust conspiracy or in violation of any related criminal law involving the purchase of  
10 properties at public real estate foreclosure auctions in the Northern District of California  
11 ("Relevant Offenses"). The nonprosecution terms of this paragraph do not apply to (a) any acts  
12 of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or  
13 declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*),  
14 contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (b) civil matters of  
15 any kind; (c) any violation of the federal tax or securities laws or conspiracy to commit such  
16 offenses; or (d) any crime of violence.

17 19. The defendant understands that he may be subject to administrative action by  
18 federal or state agencies other than the United States Department of Justice, Antitrust Division,  
19 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in  
20 no way controls whatever action, if any, other agencies may take. However, the United States  
21 agrees that, if requested, it will advise the appropriate officials of any governmental agency  
22 considering such administrative action of the fact, manner, and extent of the cooperation of the  
23 defendant as a matter for that agency to consider before determining what administrative action,  
24 if any, to take.

25 REPRESENTATION BY COUNSEL

26 20. The defendant has reviewed all legal and factual aspects of this case with his  
27 attorney and is fully satisfied with his attorney's legal representation. The defendant has  
28 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory

1 explanations from his attorney concerning each paragraph of this Plea Agreement and  
2 alternatives available to the defendant other than entering into this Plea Agreement. After  
3 conferring with his attorney and considering all available alternatives, the defendant has made a  
4 knowing and voluntary decision to enter into this Plea Agreement.

5 VOLUNTARY PLEA

6 21. The defendant's decision to enter into this Plea Agreement and to tender a plea of  
7 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,  
8 or representations other than the representations contained in this Plea Agreement. The United  
9 States has made no promises or representations to the defendant as to whether the Court will  
10 accept or reject the recommendations contained within this Plea Agreement.

11 VIOLATION OF PLEA AGREEMENT

12 22. The defendant agrees that, should the United States determine in good faith,  
13 during the period that any Federal Proceeding is pending, that the defendant has failed to provide  
14 full, truthful, and continuing cooperation, as defined in Paragraph 17 of this Plea Agreement, or  
15 has otherwise violated any provision of this Plea Agreement, the United States will notify  
16 counsel for the defendant in writing by personal or overnight delivery, email, or facsimile  
17 transmission and may also notify counsel by telephone of its intention to void any of its  
18 obligations under this Plea Agreement (except its obligations under this paragraph), and the  
19 defendant will be subject to prosecution for any federal crime of which the United States has  
20 knowledge, including, but not limited to, the substantive offenses relating to the investigation  
21 resulting in this Plea Agreement. The defendant may seek Court review of any determination  
22 made by the United States under this paragraph to void any of its obligations under this Plea  
23 Agreement. The defendant agrees that, in the event that the United States is released from its  
24 obligations under this Plea Agreement and brings criminal charges against the defendant for any  
25 Relevant Offense, the statute of limitations period for such offense will be tolled for the period  
26 between the date of signature of this Plea Agreement and six (6) months after the date the United  
27 States gave notice of its intent to void its obligations under this Plea Agreement.

1 23. The defendant understands and agrees that in any further prosecution of him  
2 resulting from the release of the United States from its obligations under this Plea Agreement  
3 because of the defendant's violation of this Plea Agreement, any documents, statements,  
4 information, testimony, or evidence provided by him to attorneys or agents of the United States,  
5 federal grand juries, or courts, and any leads derived therefrom, may be used against him. In  
6 addition, the defendant unconditionally waives his right to challenge the use of such evidence in  
7 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

8 ENTIRETY OF AGREEMENT

9 24. This Plea Agreement constitutes the entire agreement between the United States  
10 and the defendant concerning the disposition of the criminal charges in this case and supersedes  
11 and replaces in its entirety any prior plea agreement between the parties concerning the  
12 disposition of the criminal charges in this case. This Plea Agreement cannot be modified except  
13 in writing, signed by the United States and the defendant.

14 25. The undersigned attorneys for the United States have been authorized by the  
15 Attorney General of the United States to enter this Plea Agreement on behalf of the United  
16 States.


17 A facsimile or PDF signature will be deemed an original signature for the purpose of  
18 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
19 executing this Plea Agreement.

20   
21 DAVID MARGEN  
22 Defendant

23 Dated: 11/29/16

24   
25 EDWARD SWANSON  
26 Swanson & McNamara LLP  
27 Counsel for Defendant David Margen

28 Dated: 11/28/16

  
ALBERT B. SAMBAT  
MICHAEL A. RABKIN  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division

Dated: 11/29/2016