

FILED

AUG 11 2016

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

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA

15 v.

16 TROD LIMITED, d/b/a BUY 4 LESS, d/b/a BUY
17 FOR LESS, d/b/a BUY-FOR-LESS-ONLINE,

18 Defendant.

No. CR 15-0419 WHO

Violation: Price Fixing, 15 U.S.C. § 1

19 **PLEA AGREEMENT**

20 The United States of America and TROD LIMITED, d/b/a BUY 4 LESS, d/b/a BUY
21 FOR LESS, d/b/a BUY-FOR-LESS-ONLINE ("the defendant"), a corporation organized and
22 existing under the laws of the United Kingdom, hereby enter into the following plea agreement
23 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

24 **RIGHTS OF DEFENDANT**

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

1 (d) to confront and cross-examine witnesses against it and to
2 subpoena witnesses in its defense at trial;

3 (e) to appeal its conviction if it is found guilty; and

4 (f) to appeal the imposition of sentence against it.

5 **AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

6 2. The defendant knowingly and voluntarily waives the rights set out in paragraph
7 1(b)-(e), above. The defendant also knowingly and voluntarily waives the right to file any
8 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
9 under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is
10 consistent with or below the recommended sentence in paragraph 9 of this plea agreement,
11 regardless of how the sentence is determined by the Court. This agreement does not affect the
12 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this
13 paragraph, however, will act as a bar to the defendant perfecting any legal remedies it may
14 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of
15 counsel or prosecutorial misconduct. The defendant agrees that there is currently no known
16 evidence of ineffective assistance of counsel or prosecutorial misconduct. The defendant will
17 plead guilty to the one-count indictment filed in the United States District Court for the Northern
18 District of California on August 27, 2015. The indictment charges the defendant with entering
19 into and engaging in a combination and conspiracy to fix the prices of certain posters sold in the
20 United States through Amazon Marketplace, Amazon.com, Inc.'s ("Amazon") website for third-
21 party sellers, from as early as September 2013 until in or about January 2014, in violation of the
22 Sherman Antitrust Act, 15 U.S.C. § 1.

23 3. The defendant will plead guilty to the criminal charge described in paragraph 2
24 above pursuant to the terms of this plea agreement and will make a factual admission of guilt to
25 the Court in accordance with Fed. R. Crim. P. 11, as set forth in paragraph 4 below.

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FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this plea agreement, the “relevant period” is that period from as early as September 2013 until in or about January 2014. During the relevant period, the defendant was an entity organized and existing under the laws of the United Kingdom with its principal place of business in Birmingham, England. During the relevant period, the defendant was engaged in the sale of posters in the United States and elsewhere. Posters are pieces of paper depicting printed images that are designed to be hung on, mounted on, or affixed to a wall or other vertical surface.

(b) During the relevant period, the defendant, through its employees and its owner, participated in a conspiracy with other persons and firms engaged in the sale of posters, the primary purpose of which was to fix, increase, maintain, and stabilize prices of certain posters sold through Amazon Marketplace in the United States. In furtherance of the conspiracy, the defendant engaged in pricing discussions with representatives of other poster-selling firms. During these discussions, the defendant and its coconspirators agreed to fix, increase, maintain, and stabilize prices of certain posters sold in the United States on Amazon Marketplace (“agreed-upon posters”). In order to implement these agreements, the defendant and its coconspirators agreed to adopt specific pricing algorithms for the sale of the agreed-upon posters with the goal of coordinating changes to their respective prices. During the relevant period, the defendant’s sales of agreed-upon posters affecting U.S. customers totaled at least \$175,000.

(c) During the relevant period, the defendant and its coconspirators sold substantial quantities of posters from outside the United States to various states in the United States in a continuous and uninterrupted flow of interstate and foreign trade and commerce. The business activities of the defendant and its coconspirators in connection with the production and sale of posters that are the subject of the charged conspiracy

1 were within the flow of, and substantially affected, interstate and foreign trade and
2 commerce.

3 (d) Acts in furtherance of this conspiracy were carried out, in part, in the
4 Northern District of California. Posters that were the subject of this conspiracy were sold
5 by one or more of the coconspirators to customers in this District.

6 **ELEMENTS OF THE OFFENSE**

7 5. The elements of the charged offense are that:

8 (a) the conspiracy described in the indictment existed at or about the time
9 alleged;

10 (b) the defendant knowingly became a member of the conspiracy; and

11 (c) the conspiracy described in the indictment either substantially affected
12 interstate commerce in goods or services or occurred within the flow of interstate
13 commerce in goods and services.

14 **POSSIBLE MAXIMUM SENTENCE**

15 6. The defendant understands that the statutory maximum penalty that may be
16 imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is
17 a fine in an amount equal to the greatest of:

18 (a) \$100 million (15 U.S.C. § 1);

19 (b) twice the gross pecuniary gain the conspirators derived from the crime (18
20 U.S.C. § 3571(c) and (d)); or

21 (c) twice the gross pecuniary loss caused to the victims of the crime by the
22 conspirators (18 U.S.C. § 3571(c) and (d)).

23 7. In addition, the defendant understands that:

24 (a) pursuant to §8D1.2(a)(1) of the United States Sentencing Guidelines
25 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) or 18 U.S.C. § 3561(c)(1), the
26 Court may impose a term of probation of at least one year, but not more than five years;

27 (b) pursuant to §8B1.1 of the Sentencing Guidelines or 18 U.S.C. § 3563(b)(2)
28 or 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and

1 (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the
2 defendant to pay a \$400 special assessment upon conviction for the charged crime.

3 **SENTENCING GUIDELINES**

4 8. The defendant understands that the Sentencing Guidelines are advisory, not
5 mandatory, but that the Court must consider, in determining and imposing sentence, the
6 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater
7 punishment than the Manual in effect on the last date that the offense of conviction was
8 committed, in which case the Court must consider the Guidelines Manual in effect on the last
9 date that the offense of conviction was committed. The parties agree there is no *ex post facto*
10 issue under the November 1, 2015 Guidelines Manual. The Court must also consider the other
11 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant
12 understands that the Court will make the Guidelines determinations by applying the standard of
13 preponderance of the evidence. The defendant understands that although the Court is not
14 ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must
15 be reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.
16 § 3553(a).

17 **SENTENCING AGREEMENT**

18 9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
19 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
20 Court impose, a sentence within the applicable Guidelines range requiring the defendant to pay
21 to the United States a criminal fine of \$50,000 to be paid in five installments as set forth below,
22 with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) ("the recommended sentence"): within
23 thirty (30) days of imposition of sentence -- \$10,000 (plus any accrued interest); at the three-
24 month anniversary of imposition of sentence -- \$10,000 (plus any accrued interest); at the six-
25 month anniversary of imposition of sentence -- \$10,000 (plus any accrued interest); at the nine-
26 month anniversary of imposition of sentence -- \$10,000 (plus any accrued interest); and at the
27 one-year anniversary of imposition of sentence -- \$10,000 (plus any accrued interest). The
28 payment and accrued interest shall be guaranteed by Daniel William Aston as evidenced by the

1 letter of Daniel William Aston, attached as Exhibit A to, and incorporated by reference in, this
2 plea agreement.

3 The parties agree that there exists no aggravating or mitigating circumstance of a kind or
4 to a degree not adequately taken into consideration by the U.S. Sentencing Commission in
5 formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The
6 parties agree not to seek at the sentencing hearing any sentence outside of the Guidelines range
7 or any Guidelines adjustment for any reason that is not set forth in this plea agreement. The
8 parties further agree that the recommended sentence set forth in this plea agreement is
9 reasonable.

10 (a) The defendant understands that the Court will order it to pay a \$400
11 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine
12 imposed.

13 (b) In light of the availability of civil causes of action, which potentially
14 provide for a recovery of a multiple of actual damages, the recommended sentence does
15 not include a restitution order for the offense charged in the indictment.

16 (c) Both parties will recommend that no term of probation be imposed, but the
17 defendant understands that the Court's denial of this request will not void this plea
18 agreement.

19 (d) The United States and the defendant jointly submit that this plea
20 agreement, together with the record that will be created by the United States and the
21 defendant at the plea and sentencing hearings, will provide sufficient information
22 concerning the defendant, the crime charged in this case, and the defendant's role in the
23 crime to enable the meaningful exercise of sentencing authority by the Court under 18
24 U.S.C. § 3553. The United States and the defendant agree to request jointly that the
25 Court accept the defendant's guilty plea and impose sentence on an expedited schedule,
26 based upon the record provided by the defendant and the United States, under the
27 provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. §6A1.1, and Crim. L.R. 32-1(b).
28

1 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (b) civil matters of any kind; (c) any
2 violation of the federal tax or securities laws or conspiracy to commit such offenses; or (d) any
3 crime of violence. The “date of signature of this plea agreement,” as used in this agreement,
4 means the date that the United States signs this agreement. This plea agreement does not
5 terminate or preclude the investigation or prosecution of any natural persons, including but not
6 limited to any persons who were directors, officers, or employees of the defendant during the
7 relevant period.

8 **REPRESENTATION BY COUNSEL**

9 12. The defendant has been represented by counsel and is fully satisfied that its
10 attorneys have provided competent legal representation. The defendant has thoroughly reviewed
11 this plea agreement and acknowledges that counsel has advised it of the nature of the charge, any
12 possible defenses to the charge, and the nature and range of possible sentences.

13 **VOLUNTARY PLEA**

14 13. The defendant’s decision to enter into this plea agreement and to tender a plea of
15 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
16 or representations other than the representations contained in this plea agreement and Exhibits A
17 and B. The United States has made no promises or representations to the defendant as to
18 whether the Court will accept or reject the recommendations contained within this plea
19 agreement.

20 **VIOLATION OF PLEA AGREEMENT**

21 14. The defendant agrees that, should the United States determine in good faith,
22 during the period that the current federal investigation of violations of federal antitrust and
23 related criminal laws involving the sale of posters, any federal investigation resulting therefrom,
24 or any litigation or other proceedings arising or resulting from such investigation to which the
25 United States is a party (collectively “Federal Proceeding”) is pending, that the defendant has
26 violated any provision of this plea agreement, the United States will notify counsel for the
27 defendant in writing by personal or overnight delivery, email, or facsimile transmission, and may
28 also notify counsel by telephone, of its intention to void any of its obligations under this plea

1 agreement (except its obligations under this paragraph), and the defendant will be subject to
2 prosecution for any federal crime of which the United States has knowledge, including but not
3 limited to the substantive offenses relating to the investigation resulting in this plea agreement.
4 The defendant may seek Court review of any determination made by the United States under this
5 paragraph to void any of its obligations under this plea agreement. The defendant agrees that, in
6 the event that the United States is released from its obligations under this plea agreement and
7 brings criminal charges against the defendant for any offense referred to in paragraph 11 of this
8 plea agreement, the statute of limitations period for such offense will be tolled for the period
9 between the date of signature of this plea agreement and six (6) months after the date the United
10 States gave notice of its intent to void its obligations under this plea agreement.

11 15. The defendant understands and agrees that in any further prosecution of it
12 resulting from the release of the United States from its obligations under this plea agreement
13 because of the defendant's violation of this plea agreement, any documents, statements,
14 information, testimony, or evidence provided by it or its current or former directors, officers, or
15 employees to attorneys or agents of the United States, federal grand juries, or courts, and any
16 leads derived therefrom, may be used against it. In addition, the defendant unconditionally
17 waives its right to challenge the use of such evidence in any such further prosecution,
18 notwithstanding the protections of Fed. R. Evid. 410.

19 KPMG

20 16. Christopher Robert Pole of KPMG LLP, One Snowhill, Snow Hill Queensway,
21 Birmingham, B4 6GH, United Kingdom and Allan Watson Graham of KPMG LLP, 15 Canada
22 Square, London, E14 5GL, United Kingdom (the "Administrators") were appointed as the joint
23 administrators of the defendant on March 26, 2016, by order of the U.K. High Court of Justice,
24 Chancery Division, Birmingham District Registry, under action number 8097 of 2016. The
25 Administrators, KPMG LLP, or any KPMG LLP partner or employee who was not a director,
26 officer, or employee of the defendant during the relevant period had no involvement in or
27 personal knowledge of the Relevant Offense. No personal liability in connection with the
28 Relevant Offense shall fall on the Administrators or KPMG LLP or any KPMG LLP partner or

1 employee who was not a director, officer, or employee of the defendant during the relevant
2 period. Nothing in this plea agreement shall impose any fine, penalty, or liability on the
3 Administrators or KPMG LLP or any KPMG LLP partner or employee who was not a director,
4 officer, or employee of the defendant during the relevant period in relation to the Relevant
5 Offense.

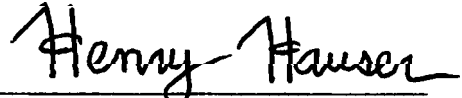
6 **ENTIRETY OF AGREEMENT**

7 17. This plea agreement and Exhibits A and B constitute the entire agreement
8 between the United States and the defendant concerning the disposition of the criminal charge in
9 this case. This plea agreement cannot be modified except in writing, signed by the United States
10 and the defendant.

11 18. The undersigned Daniel William Aston is authorized to enter this plea agreement
12 on behalf of the defendant as evidenced by the letter from the Administrators, attached as
13 Exhibit B to, and incorporated by reference in, this plea agreement.

14 19. A facsimile or PDF signature will be deemed an original signature for the purpose
15 of executing this plea agreement. Multiple signature pages are authorized for the purpose of
16 executing this plea agreement.

17 Respectfully submitted,

18 

19 MICAH L. RUBBO
20 HENRY J. HAUSER
21 Trial Attorneys
22 U.S. Department of Justice
23 Antitrust Division

24 Dated: 6/9/16

19 DANIEL WILLIAM ASTON
20 FOR TROD LIMITED

21 Dated: _____

24 BRIAN MASCHLER, ESQ.
25 Gordon & Rees
26 Counsel for TROD LIMITED

27 Dated: _____

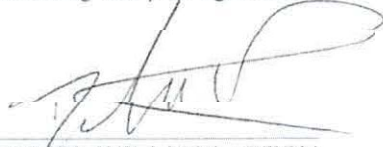
1 employee who was not a director, officer, or employee of the defendant during the relevant
2 period. Nothing in this plea agreement shall impose any fine, penalty, or liability on the
3 Administrators or KPMG LLP or any KPMG LLP partner or employee who was not a director,
4 officer, or employee of the defendant during the relevant period in relation to the Relevant
5 Offense.

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15 of executing this plea agreement. Multiple signature pages are authorized for the purpose of
16 executing this plea agreement.

17 

19 DANIEL WILLIAM ASTON
20 FOR TROD LIMITED

21 Dated: 31/5/16

22 

24 BRIAN MASCHLER, ESQ.
25 Gordon & Rees
26 Counsel for TROD LIMITED

27 Dated: 6/8/16

Respectfully submitted,

MICAH L. RUBBO
HENRY J. HAUSER
Trial Attorneys
U.S. Department of Justice
Antitrust Division

Dated: _____