

**FILED**

APR 30 2015

**RICHARD W. WIEKING**  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 MICAH L. WYATT (CSBN 267465)  
2 HENRY J. HAUSER (CSBN 286744)  
3 U.S. Department of Justice  
4 Antitrust Division  
5 450 Golden Gate Avenue  
6 Box 36046, Room 10-0101  
7 San Francisco, CA 94102  
8 Telephone: (415) 934-5300  
9 micah.wyatt@usdoj.gov

6 Attorneys for the United States

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA )

13 v. )

15 DAVID TOPKINS, )

16 Defendant. )

No. CR 15-00201 WHO

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

19 **PLEA AGREEMENT**

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

23 **RIGHTS OF DEFENDANT**

- 24 1. The defendant understands his rights:
- 25 (a) to be represented by an attorney;
- 26 (b) to be charged by Indictment;

27 //

28 //

1 (c) as a citizen and resident of the United States of America, to decline to  
2 accept service of the Summons in this case, and to contest the jurisdiction of the  
3 United States to prosecute this case against him in the United States District Court for the  
4 Northern District of California;

5 (d) to plead not guilty to any criminal charge brought against him;

6 (e) to have a trial by jury, at which he would be presumed not  
7 guilty of the charge and the United States would have to prove every essential element of  
8 the charged offense beyond a reasonable doubt for him to be found guilty;

9 (f) to confront and cross-examine witnesses against him and to  
10 subpoena witnesses in his defense at trial;

11 (g) not to be compelled to incriminate himself;

12 (h) to appeal his conviction, if he is found guilty; and

13 (i) to appeal the imposition of sentence against him.

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

15 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph  
16 1(b)-(h) above. The defendant also knowingly and voluntarily waives the right to file any  
17 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal  
18 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the  
19 sentence imposed by the Court if that sentence is consistent with or below the recommended  
20 sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by  
21 the Court. This agreement does not affect the rights or obligations of the United States as set  
22 forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, will act as a bar to the  
23 defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack  
24 respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The  
25 defendant agrees that there is currently no known evidence of ineffective assistance of counsel or  
26 prosecutorial misconduct. Consistent with Fed. R. Crim. P. 11(b)(1)(O), the defendant  
27 recognizes that if he is not a citizen of the United States, pleading guilty may have consequences  
28 with respect to his immigration status, including removal from the United States, denial of

1 citizenship, and denial of admission to the United States in the future. Pursuant to Fed. R. Crim.  
2 P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be  
3 filed in the United States District Court for the Northern District of California. The Information  
4 will charge the defendant with entering into and engaging in a combination and conspiracy to fix  
5 the prices of certain posters sold in the United States through Amazon Marketplace,  
6 Amazon.com, Inc.'s ("Amazon") website for third-party sellers, from as early as September 2013  
7 until in or about January 2014, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

8 3. The defendant will plead guilty to the criminal charge described in Paragraph 2  
9 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to  
10 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United  
11 States agrees that at the arraignment, it will stipulate to the release of the defendant on his  
12 personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

13 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

16 (a) For purposes of this Plea Agreement, the "relevant period" is that period  
17 from as early as September 2013 until in or about January 2014. During the relevant  
18 period, the defendant was Director of Trend at Company A, an entity organized and  
19 existing under the laws of Delaware and with its principal place of business in  
20 Emeryville, California. During the relevant period, Company A was engaged in the sale  
21 of posters, prints, and framed art in the United States and elsewhere. Posters are pieces  
22 of paper depicting printed images that are designed to be hung, mounted on, or affixed to  
23 a wall or other vertical surface.

24 (b) During the relevant period, the defendant participated in a conspiracy with  
25 other persons and firms engaged in the sale of posters, the primary purpose of which was  
26 to fix, increase, maintain, and stabilize prices of certain posters sold through Amazon  
27 Marketplace in the United States. In furtherance of the conspiracy, the defendant  
28 engaged in pricing discussions with representatives of other poster-selling firms. During

1 these discussions, the defendant and his co-conspirators agreed to fix, increase, maintain,  
2 and stabilize prices of certain posters sold in the United States on Amazon Marketplace  
3 (“agreed-upon posters”). In order to implement these agreements, the defendant and his  
4 co-conspirators agreed to adopt specific pricing algorithms for the sale of the agreed-  
5 upon posters with the goal of coordinating changes to their respective prices.

6 (c) During the relevant period, posters sold by one or more of the co-  
7 conspirator firms, as well as payments for posters, traveled in interstate commerce. The  
8 business activities of Company A and its co-conspirators in connection with the  
9 production and sale of posters that were the subject of this conspiracy were within the  
10 flow of, and substantially affected, interstate trade and commerce.

11 (d) Acts in furtherance of this conspiracy were carried out within the Northern  
12 District of California, San Francisco Division. Posters that were the subject of this  
13 conspiracy were sold by one or more of the co-conspirators to customers in this District.

14 **ELEMENTS OF THE OFFENSE**

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

16 (a) the conspiracy described in the Information existed at or about the time  
17 alleged;

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

19 (c) the conspiracy described in the Information either substantially affected  
20 interstate commerce in goods or services or occurred within the flow of interstate  
21 commerce in goods and services.

22 **POSSIBLE MAXIMUM SENTENCE**

23 6. The defendant understands that the statutory maximum penalty that may be  
24 imposed against him upon conviction for a violation of Section One of the Sherman Antitrust  
25 Act is:

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

27 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the  
28 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross

1 pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18  
2 U.S.C. § 3571(b) and (d)); and

3 (c) a term of supervised release of three (3) years following any term of  
4 imprisonment. If the defendant violates any condition of supervised release, the  
5 defendant could be required to serve up to an additional two (2) years in prison  
6 (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing  
7 Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

8 7. In addition, the defendant understands that:

9 (a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the  
10 Court may order him to pay restitution to the victims of the offense; and

11 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the  
12 defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

13 **SENTENCING GUIDELINES**

14 8. The defendant understands that the Sentencing Guidelines are advisory, not  
15 mandatory, but that the Court must consider, in determining and imposing sentence, the  
16 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater  
17 punishment than the Manual in effect on the last date that the offense of conviction was  
18 committed, in which case the Court must consider the Guidelines Manual in effect on the last  
19 date that the offense of conviction was committed. The parties agree there is no *ex post facto*  
20 issue under the November 1, 2013, Guidelines Manual. The Court must also consider the other  
21 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant  
22 understands that the Guidelines determinations will be made by the Court by a preponderance-  
23 of-the-evidence standard. The defendant understands that although the Court is not ultimately  
24 bound to impose a sentence within the applicable Guidelines range, its sentence must be  
25 reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. §  
26 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating  
27 information that the defendant provides to the United States pursuant to this Plea Agreement will  
28 not be used to increase the volume of affected commerce attributable to the defendant or in

1 determining the defendant's applicable Guidelines range, except to the extent provided in  
 2 U.S.S.G. §1B1.8(b).

3 **SENTENCING AGREEMENT**

4 9. The United States and the defendant agree that the following Sentencing  
 5 Guidelines apply:

6 Count One (15 U.S.C. § 1):

7	i.	Base Offense Level, U.S.S.G. §2R1.1(a):	12
8	ii.	Volume of Commerce (stipulated to be \$575,000),	
9		U.S.S.G. §2R1.1(b)(2):	+0
10		Total:	12
11		Fine calculated as one to five percent of the volume	
12		of commerce, but not less than \$20,000,	
13		U.S.S.G. §2R1.1(c)(1):	\$20,000 to \$28,750

14 10. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1,  
 15 for a downward adjustment of two levels for acceptance of responsibility due to the defendant's  
 16 timely notification of his intention to enter a guilty plea. Therefore, the ultimate Guidelines  
 17 calculations result in an adjusted offense level of 10, for a term of imprisonment of 6 to 12  
 18 months and a fine range of \$20,000 to \$28,750. The United States agrees that it will  
 19 recommend that the Court impose the minimum fine of \$20,000.

20 11. The defendant understands that the Court will order him to pay a \$100 special  
 21 assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

22 12. In light of the availability of civil causes of action, which potentially provide for a  
 23 recovery of a multiple of actual damages, the recommended sentence does not include a  
 24 restitution order for the offense charged in the Information.

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

1           14.     The defendant understands that the sentence to be imposed on him is within the  
2 sole discretion of the sentencing judge. The United States cannot and does not make any  
3 promises or representations as to what sentence the defendant will receive. However, the United  
4 States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and  
5 extent of the defendant's activities in this case and all other activities of the defendant that the  
6 United States deems relevant to sentencing; and (c) the nature and extent of the defendant's  
7 cooperation with the United States. In so doing, the United States may use any information it  
8 deems relevant, including information provided by the defendant both prior and subsequent to  
9 the signing of this Agreement. The United States reserves the right to make any statement to the  
10 Court or the Probation Office concerning the nature of the criminal violations charged in the  
11 attached Information, the participation of the defendant therein, and any other facts or  
12 circumstances that it deems relevant. The United States also reserves the right to comment on or  
13 to correct any representation made by or on behalf of the defendant and to supply any other  
14 information that the Court may require.

15           15.     If the United States determines that the defendant has provided substantial  
16 assistance in any Federal Proceeding, as defined in Paragraph 18 of this Plea Agreement, and has  
17 otherwise fully complied with all of the terms of this Plea Agreement, the United States will  
18 make a motion, pursuant to U.S.S.G. §5K1.1, requesting the Court to sentence the defendant in  
19 light of the advisory factors set forth in §5K1.1(a)(1)-(5) and requesting a downward departure.  
20 The United States shall have sole discretion in determining whether the defendant has provided  
21 such substantial assistance and has otherwise complied with the terms of this Plea Agreement  
22 and, therefore, whether any motion pursuant to §5K1.1 should be made. The United States's  
23 determination of whether the defendant has provided substantial assistance or otherwise  
24 complied with the terms of this Plea Agreement will not depend in any way on the outcome of  
25 any trial or other proceeding at which the defendant testifies. If the United States makes such a  
26 motion, the defendant is bound by the departure recommended by the United States. It is  
27 understood that should the United States determine that the defendant has not provided  
28 substantial assistance in any Federal Proceeding, or should the United States determine that the

1 defendant has violated any provision of this Plea Agreement, such a determination will release  
2 the United States from any obligation to make a motion pursuant to §5K1.1, but will not entitle  
3 the defendant to withdraw his guilty plea once it has been entered. The defendant further  
4 understands that, whether or not the United States files a motion pursuant to U.S.S.G. §5K1.1,  
5 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

6 16. Subject to the ongoing, full, and truthful cooperation of the defendant described in  
7 Paragraph 18 of this Plea Agreement, and before sentencing in the case, the United States will  
8 fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's  
9 cooperation and his commitment to prospective cooperation with the United States's  
10 investigation and prosecutions, all material facts relating to the defendant's involvement in the  
11 charged offense, and all other relevant conduct. To enable the Court to have the benefit of all  
12 relevant sentencing information, the United States may request, and the defendant will not  
13 oppose, that sentencing be postponed until the defendant's cooperation is complete.

14 17. The United States and the defendant understand that the Court retains complete  
15 discretion to accept or reject either party's sentencing recommendation provided for in Paragraph  
16 9 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P.  
17 11(c)(3)(B), if the Court does not impose either party's sentencing recommendation contained in  
18 this Agreement, he nevertheless has no right to withdraw his plea of guilty.

#### 19 DEFENDANT'S COOPERATION

20 18. The defendant will cooperate fully and truthfully with the United  
21 States in the prosecution of this case, the current federal investigation of violations of federal  
22 antitrust and related criminal laws involving the sale of posters in the United States, any federal  
23 investigation resulting therefrom, and any litigation or other proceedings arising or resulting  
24 from any such investigation to which the United States is a party (collectively "Federal  
25 Proceeding"). Federal Proceeding includes, but is not limited to, an investigation, prosecution,  
26 litigation, or other proceeding regarding obstruction of, the making of a false statement or  
27 declaration in, the commission of perjury or subornation of perjury in, the commission of  
28



1 contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The full, truthful,  
2 and continuing cooperation of the defendant will include, but not be limited to:

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

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

11 (c) responding fully and truthfully to all inquiries of the United  
12 States in connection with any Federal Proceeding, without falsely implicating any person  
13 or intentionally withholding any information, subject to the penalties of making a false  
14 statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §  
15 1503, *et seq.*), or conspiracy to commit such offenses;

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

20 (e) when called upon to do so by the United States in connection  
21 with any Federal Proceeding, testifying in grand jury, trial, and other  
22 judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury  
23 (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court  
24 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of  
25 justice (18 U.S.C. § 1503, *et seq.*).

26 //

27 //

1 GOVERNMENT'S AGREEMENT

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

14 REPRESENTATION BY COUNSEL

15 20. The defendant has reviewed all legal and factual aspects of this case with his  
16 attorney and is fully satisfied with his attorney's legal representation. The defendant has  
17 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory  
18 explanations from his attorney concerning each paragraph of this Plea Agreement and  
19 alternatives available to the defendant other than entering into this Plea Agreement. After  
20 conferring with his attorney and considering all available alternatives, the defendant has made a  
21 knowing and voluntary decision to enter into this Plea Agreement.

22 VOLUNTARY PLEA

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

28 //

**VIOLATION OF PLEA AGREEMENT**

1  
2           22.     The defendant agrees that, should the United States determine in good faith,  
3 during the period that any Federal Proceeding is pending, that the defendant has failed to provide  
4 full, truthful, and continuing cooperation, as defined in Paragraph 18 of this Plea Agreement, or  
5 has otherwise violated any provision of this Plea Agreement, the United States will notify  
6 counsel for the defendant in writing by personal or overnight delivery, email, or facsimile  
7 transmission and may also notify counsel by telephone of its intention to void any of its  
8 obligations under this Plea Agreement (except its obligations under this paragraph), and the  
9 defendant will be subject to prosecution for any federal crime of which the United States has  
10 knowledge, including, but not limited to, the substantive offenses relating to the investigation  
11 resulting in this Plea Agreement. The defendant may seek Court review of any determination  
12 made by the United States under this paragraph to void any of its obligations under this Plea  
13 Agreement. The defendant agrees that, in the event that the United States is released from its  
14 obligations under this Plea Agreement and brings criminal charges against the defendant for any  
15 Relevant Offense, the statute of limitations period for such offense will be tolled for the period  
16 between the date of signature of this Plea Agreement and six (6) months after the date the United  
17 States gave notice of its intent to void its obligations under this Plea Agreement.

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

25 410.

26 //

27 //

28 //


ENTIRETY OF AGREEMENT

24. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

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

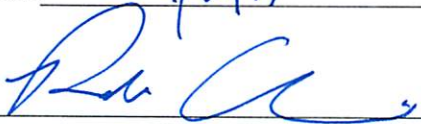
26. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Respectfully submitted,



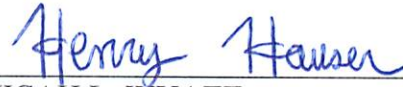
DAVID TOPKINS  
Defendant

Dated: 4/30/15



ROBB C. ADKINS  
Winston & Strawn  
Counsel for Defendant David Topkins  
101 California Street  
San Francisco, CA 94111

Dated: 4/30/15



MICAH L. WYATT  
HENRY J. HAUSER  
Trial Attorneys  
United States Department of Justice  
Antitrust Division  
450 Golden Gate Ave.  
San Francisco, CA 94102

Dated: 4/30/15