

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 20-CR-00020-MJD-HB

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	PLEA AGREEMENT AND
)	SENTENCING STIPULATIONS
v.)	
)	
ALAN GAINES,)	
)	
Defendant.)	

The United States of America and Alan Gaines (“Defendant”) agree to resolve this case on the terms and conditions that follow. This Plea Agreement binds only Defendant and the Antitrust Division of the United States Department of Justice (hereinafter referred to as “the United States”). This Plea Agreement does not bind any other federal or state agency.

1. **Charges.** Defendant agrees to plead guilty to the criminal charge in the Indictment, which charges Defendant with entering into and engaging in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating markets for lots offered for sale by GSAAuctions in violation of Title 15, United States Code, Section 1. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendant and his co-conspirators, the substantial terms of which were to suppress and eliminate competition by agreeing which co-conspirators would submit bids for particular lots offered for sale

by GSAAuctions and agreeing which co-conspirator would be designated to win a particular lot offered for sale by GSAAuctions.

2. **Factual Basis.** Defendant agrees to the following facts and further agrees that, were this matter to go to trial, the United States would prove the following facts beyond a reasonable doubt.

From in or about July 2012 and continuing through in or about May 2018 (the “Relevant Period”), in the State and District of Minnesota and elsewhere, Defendant knowingly entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating markets for the purchase of computer equipment offered for sale by GSAAuctions in the United States.

During the relevant period, Defendant was a resident of Missouri. During the relevant period, Defendant was engaged in the purchase of computers via the submission of on-line bids to GSAAuctions.

During the relevant period, GSAAuctions was an electronic system operated by the General Services Administration (the “GSA”), an agency of the Federal Government. GSAAuctions offers the general public the opportunity to bid electronically on a wide variety of federal assets, including equipment that is no longer needed by government agencies.

Any individual or company interested in bidding at GSAAuctions online auctions must register at the GSAAuctions website and accept the Sale Terms and Conditions. By accepting the GSAAuctions Sale Terms and Conditions, bidders are also agreeing to the

General Sale Terms and Conditions, Standard Form 114C, which includes a certification that bids were independently determined.

During the Relevant Period, Defendant was registered to bid at GSAAuctions.

GSAAuctions lists assets for sale at auction and identifies assets available for sale by a sale-lot number. Each lot describes the asset(s) for sale, the location of the lot, and designates precise times and dates that the auction of that lot will close. Bidders submit all bids electronically via the GSAAuctions website.

While the lot is open for bidding, prospective bidders can submit bids and monitor the number and amounts of competing bids on the GSAAuctions website. The GSAAuctions website only identifies bidders by a generic identifier, such as "Bidder #1" or "Bidder #2." The user name of each bidder is hidden and not available for viewing by the general public either during or after the auction.

Winning bidders receive email notifications and must timely submit payment directly to GSA.

Defendant's co-conspirators were other persons engaged in the purchase of computers via the submission of on-line bids to GSAAuctions. Defendant and co-conspirator Igor Yurkovetsky, a resident of Pennsylvania, initiated the conspiracy in or about July 2012.

Defendant recruited co-conspirator Marshall Holland, and attempted to recruit another person, into the conspiracy.

Defendant monitored and enforced the conspiracy by maintaining logs of bids won by the co-conspirators, including how conspirators would split the proceeds.

Defendant coordinated communications among the co-conspirators to determine which co-conspirator would bid on a certain lot and prices that the co-conspirator was willing to bid for those respective lots.

During the relevant period, for the purpose of forming and in furtherance of the charged combination and conspiracy, Defendant and his co-conspirators:

- communicated with each other via phone, text message, and email before and during auctions conducted by GSAAuctions to discuss which co-conspirator would submit the winning bid and whether the items purchased from GSAAuctions would be split among the co-conspirators;
- agreed not to compete against each other when bidding on lots offered for sale by GSAAuctions;
- agreed and designated which co-conspirators would bid on particular lots offered by GSAAuctions and which co-conspirators would submit bids or refrain from bidding on those lots;
- agreed and designated which conspirator would win a particular lot;
- communicated their Bidder numbers to each other to facilitate monitoring the bids submitted by the co-conspirators;
- submitted rigged bids to GSAAuctions for bid lots located in various states including Arizona, Florida, Hawaii, New York, Pennsylvania, South Dakota, Texas, Virginia, and West Virginia;
- decided whether and how the computers purchased pursuant to the agreement would be split among the co-conspirators; and
- submitted payment to GSAAuctions for the lots that were won.

During the relevant period, Defendant submitted rigged bids to GSAAuctions and won bids that totaled at least \$67,324.

During the relevant period, bids and payments submitted to GSAAuctions traveled in interstate commerce. The business activities of Defendant and his co-conspirators in connection with the submission of bids to GSAAuctions for the purchase of computer equipment that were the subject of this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

Defendant and his co-conspirators carried out acts in furtherance of this conspiracy within the District of Minnesota. More specifically, Defendant and his co-conspirators accessed and submitted bids to www.gsaauctions.gov, which is the GSAAuctions public internet site hosted on a server located at 3199 Pilot Knob Rd., Eagan, Minnesota.

3. **Waiver of Other Rights.** Defendant understands and agrees that he has certain rights to file pretrial motions in this case; to plead not guilty to any criminal charge brought against him; to have a trial by jury, at which he 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 him to be found guilty; to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial; not to be compelled to incriminate himself; and to appeal his conviction, if he is found guilty. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, Defendant knowingly, willingly, and voluntarily gives up these rights in this case.

4. **Statutory Penalties.** The parties agree that the statutory maximum penalty which may be imposed against Defendant upon conviction for a violation of Section One of the Sherman Act is:

- a. a term of imprisonment for 10 years (15 U.S.C. § 1);
- b. a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d));
- c. a term of supervised release of 3 years following any term of imprisonment; (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2));
- d. the Court may order him to pay restitution to the victims of the offense (U.S.S.G. § 5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d)); and
- e. a mandatory special assessment of \$100.00 upon conviction for the charged crime (18 U.S.C. § 3013(a)(2)(A)).

5. **Revocation of Supervised Release.** Defendant understands that if he violates any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximum set forth in 18 U.S.C. § 3583.

6. **Guideline Calculations.** The parties acknowledge that Defendant will be sentenced in accordance with the Sentencing Reform Act, 18 U.S.C. § 3551. *et seq.* Nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines in determining the appropriate sentence and stipulate to the following Guideline calculations.

- a. Base Offense Level. The parties agree that the base offense level is **12**. U.S.S.G. § 2R1.1(a).
- b. Specific Offense Characteristics. The parties agree that the offense level should be increased by **1 level** because the conduct involved participation in an agreement to submit non-competitive bids. U.S.S.G. § 2R1.1(b)(1).
- c. Aggravating Role. The United States reserves the right to argue that the offense level should be increased by **2 levels** because the Defendant was an organizer, leader, manager, or supervisor of the criminal activity charged in the Indictment. U.S.S.G. § 3B1.1(c). Defendant reserves the right to argue that this enhancement does not apply.
- d. Acceptance of Responsibility. The United States agrees to recommend Defendant receive a **2-level** reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, Defendant understands and agrees that this recommendation is conditioned upon the following: (i) Defendant testifies truthfully during the change of plea and sentencing hearings; (ii) Defendant provides complete and truthful information to the Probation Office in presentence investigation; and (iii) Defendant commits no further acts inconsistent with acceptance of responsibility. U.S.S.G. § 3E1.1(a).
- e. Criminal History Category. Based on information available at this time, the parties believe that Defendant's criminal history category is **I**. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status (which might impact Defendant's adjusted offense level) will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.
- f. Imprisonment Range. If the adjusted offense level is **13** as calculated above, and the criminal history category is **I**, the Sentencing Guidelines range is **12 to 18 months**.
- g. Fine Range. Pursuant to the Sentencing Guidelines, the fine range for an individual convicted of a violation of the Sherman Act is from one to five percent of the volume of commerce, but not less than

\$20,000. Therefore, the Guidelines fine in this case is **\$20,000**.
U.S.S.G. § 2R1.1(c)(1).

- h. **Supervised Release.** The Sentencing Guidelines advise a term of supervised release of **at least one year but not more than three years** of supervised release. U.S.S.G. § 5D1.2(a)(2).
- i. **Sentencing Recommendation and Departures.** Defendant reserves the right to make motions for departures or variances from the applicable Sentencing Guidelines range and to argue for a sentence outside the applicable Sentencing Guidelines range. The United States reserves the right to oppose any such motions or arguments made by Defendant. The United States agrees to recommend a sentence within the Guidelines range determined by the Court.

7. **Discretion of the Court.** The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable Guideline factors and the applicable criminal history category. The Court may also depart from the applicable Sentencing Guidelines range. If the Court determines that the applicable Guideline calculations or Defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement and Defendant will be sentenced pursuant to the Court's determination.

8. **Special Assessment.** The Sentencing Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count of which Defendant is convicted. U.S.S.G. § 5E1.3. Defendant agrees to pay the \$100.00 special assessment before sentencing.

9. **Cooperation.** Defendant agrees to fully and completely disclose to the United States (a) the existence and location of any assets to which Defendant had any right, title, or interest during the existence of the charged conspiracy or now has any right, title, or interest; and (b) the manner in which the proceeds of the conspiracy were used. Defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court.

The United States agrees to make the full extent of Defendant's cooperation known to the Court.

Defendant understands that the United States is not required to accept any tendered cooperation of Defendant's part. If the United States, in its sole discretion, chooses not to accept tendered cooperation, Defendant will not be allowed to withdraw from the plea agreement based upon that ground. Nonetheless, Defendant has decided to plead guilty as set forth above.

10. **Restitution.** Defendant understands that, pursuant to 18 U.S.C. § 3663(a)(3) or 3583(d) and U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victim of the offense. Defendant agrees to pay restitution to GSAAuctions in the amount of \$6,732, payable in full before the fifteenth (15th) day after the date of judgment.

Defendant agrees that he will fully and completely disclose to the United States the existence and location of all assets in which Defendant has any interest or over which Defendant exercises control, directly or indirectly, including those assets held by a spouse, nominee or other third party, or any business owned or controlled by Defendant.

Defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court, and to allow for forfeiture of such property or assets to the United States. Defendant agrees to complete a financial statement fully and truthfully before the date of sentencing. If requested by the United States, Defendant agrees to submit to one or more interviews or depositions under oath, and agrees to submit to polygraph examination to determine whether Defendant has truthfully disclosed the existence of all of his assets. This agreement does not limit the United States' authority to collect any remaining restitution debt by any and all means allowed under the Federal Debt Collection Procedures Act, including the filing of the lien created under 18 U.S.C. § 3613(c) as to any and all property or rights to property of Defendant.

11. **Debarment.** Defendant understands that he may be subject to suspension or debarment action by state or federal agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls what action, if any, other agencies may take. However, the Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action of the fact, manner, and extent of the cooperation of Defendant as a matter for that agency to consider before determining what action, if any, to take. Defendant nevertheless affirms that he wants to plead guilty regardless of any suspension or debarment consequences of his plea.

12. **Waivers of Appeal and Collateral Attack.** Defendant understands that 18 U.S.C. § 3742 affords Defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this plea agreement, Defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal Defendant's sentence. In addition, Defendant expressly waives the right to petition under 28 U.S.C. § 2255, including but not limited to any appeal or collateral attack raising any argument that the statute to which he is pleading guilty is unconstitutional or the admitted conduct does not fall within the scope of such statute. However, the waivers by Defendant noted above shall not apply to a direct appeal or post-conviction collateral attack based on a claim of ineffective assistance of counsel or prosecutorial misconduct. Defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Defendant has discussed these rights with his attorney. Defendant understands the rights being waived, and he waives these rights knowingly, intelligently, and voluntarily.

13. **Freedom of Information Act Waiver.** Defendant waives all rights to obtain, directly or through others, information about the investigation and prosecution of this case under the Freedom of Information Act and the Privacy Act of 1974, 5 U.S.C. §§ 552, 552A.

14. **Complete Agreement.** This is the entire agreement and understanding between the United States and Defendant. There are no other agreements, promises,

representations, or understandings.

Date: February 16, 2021

U.S. DEPARTMENT OF JUSTICE,
ANTITRUST DIVISION

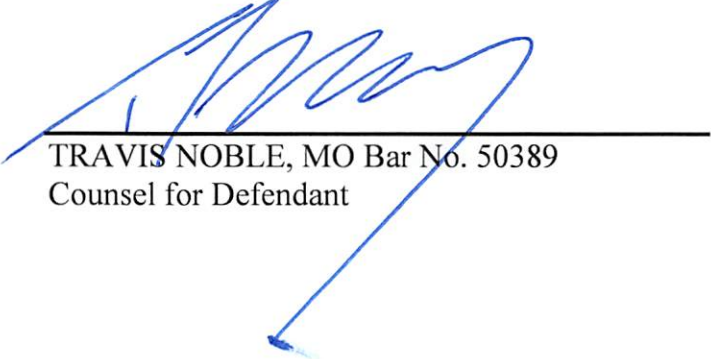
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Date: 3-17-2021


ALAN GAINES,
Defendant

Date: 3-17-2021


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