

FILED

OCT ' 6 2017

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

THOMAS GREENE (CSBN 57159)
ANDREW J. NICHOLSON-MEADE (CSBN 284070)
KEVIN B. HART (NYBN 3038031)
GABRIEL R. MARTINEZ (CSBN 275142)
U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue
Box 36046, Room 10-0101
San Francisco, CA 94102
thomas.greene@usdoj.gov
Telephone: (415) 934-5300

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

CASE NO. CR 14-00534 CRB

PLEA AGREEMENT

v.

JAMES F. APPENRODT,

Defendant.

The United States of America and JAMES F. APPENRODT ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:

- (a) to be represented by an attorney;
- (b) to be charged by Indictment;
- (c) to plead not guilty to any criminal charge brought against him;

//

//

//

PLEA AGREEMENT – JAMES F. APPENRODT
No. CR 14-00534 CRB

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

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

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

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

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

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

10 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g)
 11 above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral
 12 attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a
 13 motion under 28 U.S.C. § 2241 or § 2255, that challenges the sentence imposed by the Court if that
 14 sentence is consistent with or below the United States Sentencing Guidelines range stipulated by the
 15 parties in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the
 16 Court. This Agreement does not affect the rights or obligations of the United States as set forth in 18
 17 U.S.C. § 3742(b). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any
 18 legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective
 19 assistance of counsel or prosecutorial misconduct. Count One of the Indictment in this case charges the
 20 defendant with participating in a conspiracy to suppress and restrain competition by rigging bids to
 21 obtain selected properties offered at public real estate foreclosure auctions in San Mateo County in the
 22 Northern District of California (“the San Mateo County selected properties”), in unreasonable restraint
 23 of interstate trade and commerce, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, beginning no
 24 later than August 2008 and continuing until on or about January 11, 2011 (the “first relevant period”).
 25 Count Six of the Indictment charges the defendant with participating in a conspiracy to suppress and
 26 restrain competition by rigging bids to obtain selected properties offered at public real estate foreclosure
 27 auctions in San Francisco County in the Northern District of California (“the San Francisco County
 28 selected properties”), in unreasonable restraint of interstate trade and commerce, in violation of the

1 Sherman Act, 15 U.S.C. § 1, beginning no later than November 2008 and continuing until on or about
2 January 11, 2011 (the "second relevant period").

3 3. The defendant will plead guilty to the criminal charges described in Paragraph 2, above,
4 pursuant to the terms of this Plea Agreement, and will make a factual admission of guilt to the Court in
5 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 and
8 agrees that the following facts are true:

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

10 During the first relevant period, the defendant participated in a conspiracy to rig bids to obtain
11 the San Mateo County selected properties. The primary purpose of this conspiracy was to suppress and
12 restrain competition to purchase the San Mateo County selected properties at non-competitive prices.
13 To carry out their conspiracy, the defendant, on behalf of Joseph J. Giraudo, agreed with other
14 coconspirators not to compete to purchase the San Mateo County selected properties, designated which
15 conspirator would win the San Mateo County selected properties at the public auctions for the group of
16 conspirators, and refrained from or stopped bidding on the San Mateo County selected properties at the
17 public auctions.

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

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

25 (b) As to Count Six of the Indictment:

26 During the second relevant period, the defendant participated in a conspiracy to rig bids to obtain
27 the San Francisco County selected properties. The primary purpose of the conspiracy was to suppress
28 and restrain competition to purchase the San Francisco County selected properties at non-competitive

1 prices. To carry out their conspiracy, the defendant, on behalf of Joseph J. Giraudo, agreed with other
 2 coconspirators not to compete to purchase the San Francisco County selected properties, designated
 3 which conspirator would win the San Francisco County selected properties at the public auctions for the
 4 group of conspirators, and refrained from or stopped bidding on the San Francisco County selected
 5 properties at the public auctions.

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

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

13 POSSIBLE MAXIMUM SENTENCE

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

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

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

21 (d)); and

22 (c) a term of supervised release of three (3) years following any term of
 23 imprisonment. If the defendant violates any condition of supervised release, the defendant could be
 24 required to serve up to an additional two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. §
 25 3583(b)(2) and (e)(3); and United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines,"
 26 or "Guidelines") §5D1.2(a)(2)).

27 //

28 //

6. In addition, the defendant understands that:

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

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

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

8. The United States and the defendant agree that the following Sentencing Guidelines apply to Counts One and Six (15 U.S.C. § 1). Counts One and Six are grouped under U.S.S.G. §3D1.2(d) by aggregating the volume of commerce attributable to the defendant in both counties for a total of \$2,134,447:

(a) Base Offense Level, U.S.S.G. §2R1.1(a): 12

(b) Conduct involved agreement to submit non-competitive Bids, U.S.S.G. §2R1.1(b)(1): +1

| | | |
|-----|--|--------------------|
| (c) | Volume of Commerce (stipulated to be \$2,134,447), U.S.S.G. §2R1.1(b)(2)(A): | +2 |
| (d) | Downward adjustment for minor role in the offense, U.S.S.G. §3B1.2(b) | -2 |
| | Total: | 13 |
| | Fine calculated as one to five percent of the volume of commerce (stipulated to be \$2,134,447), but not less than \$20,000, U.S.S.G. §2R1.1(c)(1) | \$21,344-\$106,722 |

9. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1, for a downward adjustment of two levels for acceptance of responsibility due to the defendant's timely notification of his intention to enter a guilty plea. Therefore, the total Guidelines calculations result in an adjusted offense level of 11 and a fine of \$26,699-\$133,497. The United States agrees to recommend a fine between \$5,500 and \$55,000.

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

11. The government and the defendant agree to recommend that the Court order the defendant to pay no restitution pursuant to U.S.S.G. §5E1.1(a). However, if the Court orders the defendant to pay restitution, the defendant understands that this Plea Agreement is voidable by the government if he fails to pay the restitution as ordered by the Court. The defendant further agrees that he will not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

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

//

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

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

28 //

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

DEFENDANT'S COOPERATION

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

GOVERNMENT'S AGREEMENT

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

19. The defendant understands that he may be subject to administrative action by federal or state 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 whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action

1 of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider
2 before determining what administrative action, if any, to take.

3 **REPRESENTATION BY COUNSEL**

4 20. The defendant has reviewed all legal and factual aspects of this case with his attorney and
5 is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this
6 Plea Agreement with his attorney and has received satisfactory explanations from his attorney
7 concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than
8 entering into this Plea Agreement. After conferring with his attorney and considering all available
9 alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea
10 Agreement.

11 **VOLUNTARY PLEA**

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

17 **VIOLATION OF PLEA AGREEMENT**

18 22. The defendant agrees that, should the United States determine in good faith, during the
19 period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and
20 continuing cooperation, as defined in Paragraph 17 of this Plea Agreement, or has otherwise violated
21 any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing
22 by personal or overnight delivery, email, or facsimile transmission, and may also notify counsel by
23 telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations
24 under this paragraph), and the defendant will be subject to prosecution for any federal crime of which
25 the United States has knowledge, including but not limited to, the substantive offenses relating to the
26 investigation resulting in this Plea Agreement. The defendant may seek Court review of any
27 determination made by the United States under this paragraph to void any of its obligations under this
28 Plea Agreement. The defendant agrees that, in the event that the United States is released from its

obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of signature of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

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

ENTIRETY OF AGREEMENT

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

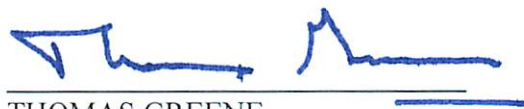
25. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

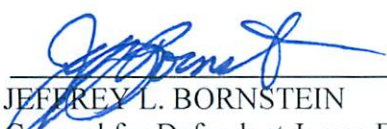
26. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: 10/06/17

Respectfully submitted,


JAMES F. APPENRODT
Defendant


THOMAS GREENE
Trial Attorney
U.S. Department of Justice
Antitrust Division


JEFFREY L. BORNSTEIN
Counsel for Defendant James F. Appenrodt
Rosen, Bien, Galvan, & Grunfeld LLP

