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FILED

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

6 Attorneys for the United States

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION

11 UNITED STATES OF AMERICA) No. CR 11-00423 PJH
12)
13 v.) **PLEA AGREEMENT**
14 ROBERT KRAMER,)
15 Defendant.)

16
17 The United States of America and Robert Kramer (“defendant”) hereby enter into the following
18 Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R.
19 Crim. P.”):

20 **RIGHTS OF DEFENDANT**

- 21 1. The defendant understands his rights:
- 22 (a) to be represented by an attorney;
 - 23 (b) to be charged by Indictment;
 - 24 (c) to plead not guilty to any criminal charge brought against him;
 - 25 (d) to have a trial by jury, at which he would be presumed not guilty of the charge

26 and the United States would have to prove every essential element of the charged offense beyond a
27 reasonable doubt for him to be found guilty;

1 (e) to confront and cross-examine witnesses against him and to subpoena witnesses in
2 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 1(b)-(g)
8 above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral
9 attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a
10 motion under 28 U.S.C. § 2241 or § 2255, that challenges the sentence imposed by the Court if that
11 sentence is consistent with or below the United States Sentencing Guidelines range stipulated by the
12 parties in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the
13 Court. This Agreement does not affect the rights or obligations of the United States as set forth in 18
14 U.S.C. § 3742(b). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any
15 legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective
16 assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will
17 waive indictment and plead guilty to Counts One and Three of the Information filed in this case. Count
18 One of the Information charges the defendant with participating in a conspiracy to suppress and restrain
19 competition by rigging bids to obtain selected properties offered at public real estate foreclosure
20 auctions in Alameda County in the Northern District of California (the “Alameda County selected
21 properties”), in unreasonable restraint of interstate trade and commerce, in violation of the Sherman
22 Antitrust Act, 15 U.S.C. § 1, beginning as early as May 2008 and continuing until in or about December
23 2010 (the “first relevant period”). Count Three of the Information charges the defendant with
24 participating in a conspiracy to suppress and restrain competition by rigging bids to obtain selected
25 properties offered at public real estate foreclosure auctions in Contra Costa County in the Northern
26 District of California (the “Contra Costa County selected properties”), in unreasonable restraint of
27 interstate trade and commerce, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, beginning as
28 early as August 2008 and continuing until in or about January 2010 (the “second relevant period”).

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

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

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

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

22 **POSSIBLE MAXIMUM SENTENCE**

23 5. The defendant understands that the statutory maximum penalty which may be imposed
24 against him upon conviction for a violation of Section One of the Sherman Antitrust Act, 15 U.S.C. § 1,
25 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 gross
28 pecuniary gain the conspirators derived from the crime, or (3) twice the gross

SENTENCING AGREEMENT

8. The United States and the defendant agree that the following Sentencing Guidelines apply to Counts One and Three (15 U.S.C. § 1). Counts One and Three 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 \$12,857,000.

(a)	Base Offense Level, U.S.S.G. §2R1.1(a):	12
(b)	Conduct involved agreement to submit noncompetitive bids, U.S.S.G. §2R1.1(b)(1):	+1
(c)	Volume of commerce (stipulated to be \$12,857,000), U.S.S.G. §2R1.1(b)(2)(B):	+4
	Total:	17

Fine calculated as one to five percent of the volume of commerce (stipulated to be \$12,857,000), but not less than \$20,000, U.S.S.G. §2R1.1(c)(1): \$128,570 to \$642,850

9. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1, for a downward adjustment of three 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 14, for a jail term of 15 to 21 months and a fine of \$128,570 to \$642,850. The United States agrees to recommend a fine between \$10,000 and \$100,000.

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 restitution in the amount of \$327,492 pursuant to U.S.S.G. §5E1.1(a). The defendant understands that this Plea Agreement is voidable by the government if he fails to pay the restitution as

1 ordered by the Court. The defendant further agrees that he will not seek to discharge any restitution
2 obligation or any part of such obligation in any bankruptcy proceeding.

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

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

20 14. If the United States determines that the defendant has provided substantial assistance in
21 any Federal Proceeding, as defined in Paragraph 17 of this Plea Agreement, and has otherwise fully
22 complied with all of the terms of this Plea Agreement, it will file a motion, pursuant to U.S.S.G. §5K1.1,
23 advising the sentencing judge of all relevant facts pertaining to that determination and requesting the
24 Court to sentence the defendant in light of the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5). The
25 defendant acknowledges that the decision whether he has provided substantial assistance in any Federal
26 Proceeding and has otherwise complied with the terms of this Plea Agreement is within the sole
27 discretion of the United States. It is understood that, should the United States determine that the
28 defendant has not provided substantial assistance in any Federal Proceeding, or should the United States

1 determine that the defendant has violated any provision of this Plea Agreement, such a determination
2 will release the United States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will
3 not entitle 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, the
5 sentence to be imposed on him remains within the sole discretion of the sentencing judge.

6 15. Subject to the full, truthful, and continuing cooperation of the defendant, as
7 defined in Paragraph 17 of this Plea Agreement, and prior to sentencing in this case, the United States
8 will 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' investigation and
10 prosecutions, all material facts relating to the defendant's involvement in the charged offenses, and all
11 other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information,
12 the United States may request, and the defendant will not oppose, that sentencing be postponed until the
13 defendant's cooperation is complete.

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

18 **DEFENDANT'S COOPERATION**

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

26 (a) producing all documents, including claimed personal documents, and other
27 materials, wherever located, not protected under the attorney-client privilege or the work-product
28

1 doctrine in the possession, custody, or control of the defendant, that are requested by attorneys and
2 agents of the United States in connection with any Federal Proceeding;

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

5 (c) responding fully and truthfully to all inquiries of the United States in connection
6 with any Federal Proceeding, without falsely implicating any person or intentionally withholding any
7 information, subject to the penalties of making a false statement or declaration (18 U.S.C. §§ 1001,
8 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to commit such offenses;

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

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

17 **GOVERNMENT'S AGREEMENT**

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

1 (c) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (d) any
2 crime of violence.

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

10 **REPRESENTATION BY COUNSEL**

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

18 **VOLUNTARY PLEA**

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

24 **VIOLATION OF PLEA AGREEMENT**

25 22. The defendant agrees that, should the United States determine in good faith, during the
26 period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and
27 continuing cooperation, as defined in Paragraph 17 of this Plea Agreement, or has otherwise violated
28 any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing

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

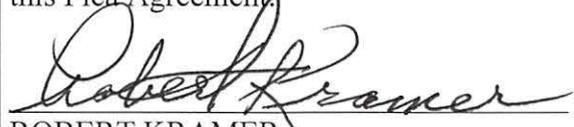
12 23. The defendant understands and agrees that in any further prosecution of him resulting
13 from the release of the United States from its obligations under this Plea Agreement because of the
14 defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or
15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

19 **ENTIRETY OF AGREEMENT**

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

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

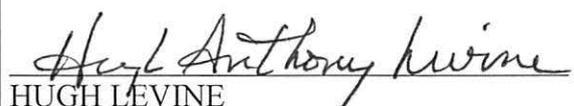
26. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.


ROBERT KRAMER
Defendant

Dated: 1/5/2017


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

Dated: 1/5/2017


HUGH LEVINE
Counsel for Defendant Robert Kramer

Dated: 1/5/2017

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