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

11 Attorneys for the United States

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 UNITED STATES OF AMERICA)

16 v.)

17 DOUGLAS DITMER,)

18 Defendant.)

No. CR 12-00448 PJH

PLEA AGREEMENT

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

RIGHTS OF DEFENDANT

22 1. The defendant understands his rights:

23 (a) to be represented by an attorney;

24 (b) to be charged by Indictment;

25 (c) to plead not guilty to any criminal charge brought against him;

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

1 (e) to confront and cross-examine witnesses against him and to subpoena
2 witnesses in 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
8 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any
9 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
10 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or § 2255, that challenges the
11 sentence imposed by the Court if that sentence is consistent with or below the United States
12 Sentencing Guidelines range stipulated by the parties in Paragraph 9 of this Plea Agreement,
13 regardless of how the sentence is determined by the Court. This Agreement does not affect the
14 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this
15 paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may
16 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of
17 counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive
18 indictment and plead guilty to Counts One and Three of the Information filed in this case. Count
19 One of the Information charges the defendant with participating in a conspiracy to suppress and
20 restrain competition by rigging bids to obtain selected properties offered at public real estate
21 foreclosure auctions in Contra Costa County, in the Northern District of California (“the Contra
22 Costa County selected properties”), in unreasonable restraint of interstate trade and commerce, in
23 violation of the Sherman Antitrust Act, 15 U.S.C. § 1, beginning as early as July 2008 and
24 continuing until in or about January 2011 (the “first relevant period”). Count Three of the
25 Information charges the defendant with participating in a conspiracy to suppress and restrain
26 competition by rigging bids to obtain selected properties offered at public real estate foreclosure
27 auctions in Alameda County, in the Northern District of California (“the Alameda County
28 selected properties”), in unreasonable restraint of interstate trade and commerce, in violation of

1 the Sherman Antitrust Act, 15 U.S.C. § 1, beginning as early as June 2007 and continuing until
2 in or about January 2011 (the “second relevant period”).

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

9 (a) As to Count One:

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

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

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

26 (b) As to Count Three:

27 During the second relevant period, the defendant participated in a conspiracy to rig bids
28 to obtain the Alameda County selected properties. The primary purpose of this conspiracy was

1 to suppress and restrain competition to purchase the Alameda County selected properties at
2 noncompetitive prices. To carry out their conspiracy, the defendant and his co-conspirators
3 agreed not to compete to purchase the Alameda County selected properties, designated which
4 conspirator would win the Alameda County selected properties at the public auctions for the
5 group of conspirators, and refrained from or stopped bidding on the Alameda County selected
6 properties at the public auctions.

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

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

15 **POSSIBLE MAXIMUM SENTENCE**

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

19 (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
20 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the
21 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary
22 loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b)
23 and (d)); and

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

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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
b.	Volume of Commerce (stipulated to be \$2,970,203), U.S.S.G. § 2R1.1(b)(2):	+2
	Total:	15

Fine calculated as one to five percent of the volume of commerce, but not less than \$20,000, U.S.S.G. § 2R1.1(c)(1): \$29,702 to \$148,510

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 13, for a jail term of 12 to 18 months and a fine of \$29,702 to \$148,510. The United States agrees to recommend a fine between \$7,500 and \$75,000.

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 \$91,144 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 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

1 defendant's Criminal History Category would be I. The parties understand that the defendant's
2 Criminal History Category is determined by the Court.

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

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

1 understands that, whether or not the United States files a motion pursuant to U.S.S.G. §5K1.1,
2 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

3 15. Subject to the full, truthful, and continuing cooperation of the defendant, as
4 defined in Paragraph 17 of this Plea Agreement, and prior to sentencing in this case, the United
5 States will fully advise the Court and the Probation Office of the fact, manner, and extent of the
6 defendant's cooperation and his commitment to prospective cooperation with the United States'
7 investigation and prosecutions, all material facts relating to the defendant's involvement in the
8 charged offenses, and all other relevant conduct. To enable the Court to have the benefit of all
9 relevant sentencing information, the United States may request, and the defendant will not
10 oppose, that sentencing be postponed until the defendant's cooperation is complete.

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

16 **DEFENDANT'S COOPERATION**

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

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

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

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

13 (e) when called upon to do so by the United States in connection with any
14 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully,
15 and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement
16 or declaration in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§
17 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

18 **GOVERNMENT'S AGREEMENT**

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

1 contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (b) civil matters of
2 any kind; (c) any violation of the federal tax or securities laws or conspiracy to commit such
3 offenses; or (d) any crime of violence.

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

12 **REPRESENTATION BY COUNSEL**

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

20 **VOLUNTARY PLEA**

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

26 **VIOLATION OF PLEA AGREEMENT**

27 22. The defendant agrees that, should the United States determine in good faith,
28 during the period that any Federal Proceeding is pending, that the defendant has failed to provide

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

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

22 **ENTIRETY OF AGREEMENT**

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

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

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

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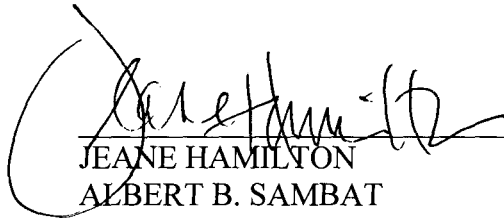
8 _____
9 DOUGLAS DITMER
10 Defendant

11 Dated: 10/7/2016

12 

13 _____
14 DORIAN PETERS
15 Gagen McCoy LLC
16 Counsel for Defendant Douglas Ditmer

17 Dated: 10/7/2016

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19 _____
20 JEANE HAMILTON
21 ALBERT B. SAMBAT
22 MICHAEL A. RABKIN
23 Trial Attorneys
24 U.S. Department of Justice
25 Antitrust Division

26 Dated: 10.7.16