

1 JEANE HAMILTON (CSBN 157834)
ALBERT B. SAMBAT (CSBN 236472)
2 MICHAEL A. RABKIN (ILRN 6293597)
U.S. Department of Justice
3 Antitrust Division
4 450 Golden Gate Avenue
Box 36046, Room 10-0101
5 San Francisco, CA 94102
Telephone: (415) 934-5300
6 jeane.hamilton@usdoj.gov

FILED

001 07 2016

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

7 Attorneys for the United States

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

11 UNITED STATES OF AMERICA)

12 v.)

13 THOMAS FRANCIOSE,)

14 Defendant.)

No. CR 11-00426 PJH

PLEA AGREEMENT

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

26 charge and the United States would have to prove every essential element of the charged offense
27 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 Count One of the Information filed in this case. Count One of the
19 Information charges the defendant with participating in a conspiracy to suppress and restrain
20 competition by rigging bids to obtain selected properties offered at public real estate foreclosure
21 auctions in Alameda County in the Northern District of California, in unreasonable restraint of
22 interstate trade and commerce, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1,
23 beginning as early as February 2009 and continuing until in or about October 2010.

24 3. The defendant will plead guilty to the criminal charge described in Paragraph 2,
25 above, pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to
26 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

27 //

28 //

FACTUAL BASIS FOR OFFENSE CHARGED

1
2 4. The defendant agrees that he is guilty of the offense to which he will plead guilty
3 and agrees that the following facts are true:

4 Beginning as early as February 2009 and continuing until in or about October 2010
5 (“relevant period”), the defendant participated in a conspiracy to rig bids to obtain selected real
6 estate at public real estate foreclosure auctions held in Alameda County, California, located in
7 the Northern District of California. The primary purpose of this conspiracy was to suppress and
8 restrain competition and obtain selected real estate offered at Alameda County public real estate
9 foreclosure auctions at noncompetitive prices. During the relevant period, the defendant and his
10 co-conspirators agreed not to bid against one another and to allocate selected real estate among
11 themselves. To carry out their conspiracy, the defendant and his co-conspirators refrained from
12 bidding on or refrained from bidding up the price for selected auctioned real estate. In many
13 instances, the defendant and his co-conspirators held private auctions, open only to members of
14 the conspiracy, to rebid this real estate. The defendant and his co-conspirators awarded this real
15 estate to the conspirator who submitted the highest bid at the private auctions. The defendant
16 and his co-conspirators distributed the proceeds of the private auctions as payoffs to the other,
17 unsuccessful bidders in the private auctions, based upon a predetermined formula agreed upon by
18 the members of the conspiracy, for refraining from bidding on these properties at the public
19 auction.

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

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

POSSIBLE MAXIMUM SENTENCE

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

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

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

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

15 6. In addition, the defendant understands that:

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

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

SENTENCING GUIDELINES

20 7. The defendant understands that the Sentencing Guidelines are advisory, not
21 mandatory, but that the Court must consider, in determining and imposing sentence, the
22 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater
23 punishment than the Manual in effect on the last date that the offense of conviction was
24 committed, in which case the Court must consider the Guidelines Manual in effect on the last
25 date that the offense of conviction was committed. The Court must also consider the other
26 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant
27 understands that the Guidelines determinations will be made by the Court by a preponderance of
28

1 the evidence standard. The defendant understands that although the Court is not ultimately
 2 bound to impose a sentence within the applicable Guidelines range, its sentence must be
 3 reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.
 4 § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating
 5 information that the defendant provides to the United States pursuant to this Plea Agreement will
 6 not be used to increase the volume of affected commerce attributable to the defendant or in
 7 determining the defendant's applicable Guidelines range, except to the extent provided in
 8 U.S.S.G. §1B1.8(b).

9 **SENTENCING AGREEMENT**

10 8. The United States and the defendant agree that the following Sentencing
 11 Guidelines apply for Count One (15 U.S.C. § 1):

12	(a)	Base Offense Level, U.S.S.G. §2R1.1(a):	12
13	(b)	Conduct involved agreement to submit noncompetitive bids, U.S.S.G. §2R1.1(b)(1):	+1
14	(c)	Volume of commerce (stipulated to be \$998,600), U.S.S.G. §2R1.1(b)(2):	+0
15		Total:	13

16
 17
 18 Fine calculated as one to five percent of the
 19 volume of commerce (stipulated to be \$998,600),
 but not less than \$20,000, U.S.S.G. §2R1.1(c)(1): \$20,000 to \$49,930

20 9. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1,
 21 for a downward adjustment of two levels for acceptance of responsibility due to the defendant's
 22 timely notification of his intention to enter a guilty plea. Therefore, the ultimate Guidelines
 23 calculations result in an adjusted offense level of 11, for a jail term of 8 to 14 months and a fine
 24 of \$20,000 to \$49,930. The United States agrees to recommend a fine between \$4,000 and
 25 \$40,000.

26 10. The defendant understands that the Court will order him to pay a special
 27 assessment of \$100 pursuant to 18 U.S.C. § 3013(a)(2)(A), in addition to any fine imposed. The
 28 parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree,

1 not adequately taken into consideration by the U.S. Sentencing Commission in formulating the
2 Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0.

3 11. The government and the defendant agree to recommend that the Court order the
4 defendant to pay restitution in the amount of \$19,893 pursuant to U.S.S.G. §5E1.1(a). The
5 defendant understands that this Plea Agreement is voidable by the government if he fails to pay
6 the restitution as ordered by the Court. The defendant further agrees that he will not seek to
7 discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

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

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

26 14. If the United States determines that the defendant has provided substantial
27 assistance in any Federal Proceeding, as defined in Paragraph 17 of this Plea Agreement, and has
28 otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion,

1 pursuant to U.S.S.G. §5K1.1, advising the sentencing judge of all relevant facts pertaining to that
2 determination and requesting the Court to sentence the defendant in light of the factors set forth
3 in U.S.S.G. §5K1.1(a)(1)-(5). The defendant acknowledges that the decision whether he has
4 provided substantial assistance in any Federal Proceeding and has otherwise complied with the
5 terms of this Plea Agreement is within the sole discretion of the United States. It is understood
6 that, should the United States determine that the defendant has not provided substantial
7 assistance in any Federal Proceeding, or should the United States determine that the defendant
8 has violated any provision of this Plea Agreement, such a determination will release the United
9 States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will not entitle the
10 defendant to withdraw his guilty plea once it has been entered. The defendant further
11 understands that, whether or not the United States files a motion pursuant to U.S.S.G. §5K1.1,
12 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

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

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

26 **DEFENDANT'S COOPERATION**

27 17. The defendant will cooperate fully and truthfully with the United States in the
28 prosecution of this case, the conduct of the current federal investigation of violations of federal

1 antitrust and related criminal laws involving the purchase of properties at public real estate
2 foreclosure auctions in the Northern District of California, any other federal investigation
3 resulting therefrom, and any litigation or other proceedings arising or resulting from any such
4 investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full,
5 and truthful cooperation of the defendant shall include, but not be limited to:

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

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

13 (c) responding fully and truthfully to all inquiries of the United States in
14 connection with any Federal Proceeding, without falsely implicating any person or intentionally
15 withholding any information, subject to the penalties of making a false statement or declaration
16 (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to
17 commit such offenses;

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

22 (e) when called upon to do so by the United States in connection with any
23 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully,
24 and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement
25 or declaration in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§
26 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).
27
28

1 **GOVERNMENT’S AGREEMENT**

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

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

23 **REPRESENTATION BY COUNSEL**

24 20. The defendant has reviewed all legal and factual aspects of this case with his
25 attorney and is fully satisfied with his attorney’s legal representation. The defendant has
26 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory
27 explanations from his attorney concerning each paragraph of this Plea Agreement and
28 alternatives available to the defendant other than entering into this Plea Agreement. After

1 conferring with his attorney and considering all available alternatives, the defendant has made a
2 knowing and voluntary decision to enter into this Plea Agreement.

3 **VOLUNTARY PLEA**

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

9 **VIOLATION OF PLEA AGREEMENT**

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

26 23. The defendant understands and agrees that in any further prosecution of him
27 resulting from the release of the United States from its obligations under this Plea Agreement
28 because of the defendant's violation of this Plea Agreement, any documents, statements,

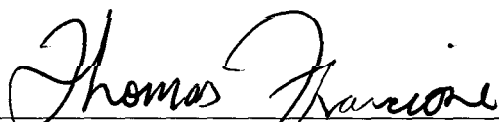
1 information, testimony, or evidence provided by him to attorneys or agents of the United States,
2 federal grand juries, or courts, and any leads derived therefrom, may be used against him. In
3 addition, the defendant unconditionally waives his right to challenge the use of such evidence in
4 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

5 **ENTIRETY OF AGREEMENT**

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

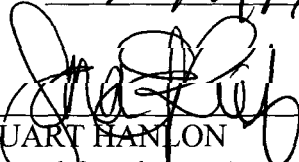
11 25. The undersigned attorneys for the United States have been authorized by the
12 Attorney General of the United States to enter this Plea Agreement on behalf of the United
13 States.

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

17 

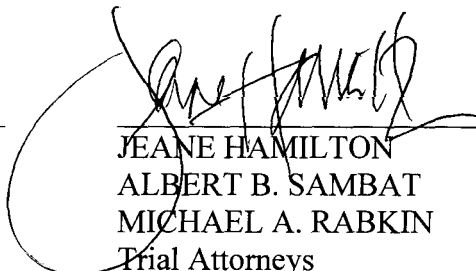
18 THOMAS FRANCIOSE
19 Defendant

20 Dated: 10/7/16

21 

22 STUART HANLON
23 Counsel for Thomas Franciose
24 Law Offices of Hanlon & Rief

25 Dated: 10/7/16

26 

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

Dated: 10-7-16