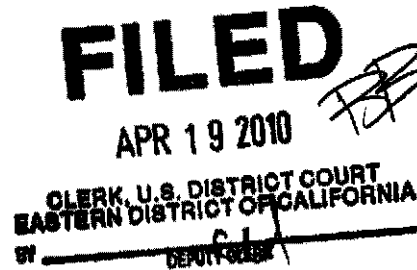


BENJAMIN B. WAGNER
United States Attorney
ROBIN R. TAYLOR
RUSSELL L. CARLBERG
Assistant U.S. Attorneys
501 "I" Street, Suite 10-100
Sacramento, California 95814
Telephone: (916) 554-2700

BARBARA J. NELSON
RICHARD B. COHEN
ALBERT B. SAMBAT
Trial Attorneys
U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue, Room 10-0101
San Francisco, CA 94102
Telephone: (415) 436-6660



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ANTHONY B. GHIO,)
)
Defendant.)

No. CR-10-144 BJB

PLEA and COOPERATION AGREEMENT

I.

INTRODUCTION

A. **Scope of Agreement:** The Information to be filed in this case charges the defendant, ANTHONY B. GHIO, with participating in a conspiracy to suppress and restrain competition by rigging bids to

1 obtain selected real estate offered at San Joaquin County,
2 California public real estate auctions in unreasonable restraint of
3 interstate trade and commerce, in violation of the Sherman Act, 15
4 U.S.C. § 1. This document contains the complete Plea and
5 Cooperation Agreement between the United States Attorney's Office
6 for the Eastern District of California and the United States
7 Department of Justice, Antitrust Division (the "government"), and
8 the defendant regarding this case. This Plea and Cooperation
9 Agreement is limited to the United States Attorney's Office for the
10 Eastern District of California and the United States Department of
11 Justice, Antitrust Division, and cannot bind any other federal,
12 state, or local prosecuting, administrative, or regulatory
13 authorities.
14
15

16 **B. Court Not a Party:** The Court is not a party to this Plea
17 and Cooperation Agreement. Sentencing is a matter solely within the
18 discretion of the Court, the Court is under no obligation to accept
19 any recommendations made by the government, and the Court may in its
20 discretion impose any sentence it deems appropriate, up to and
21 including the statutory maximum stated in this Plea and Cooperation
22 Agreement. If the Court should impose any sentence up to the
23 maximum established by the statute, the defendant cannot, for that
24 reason alone, withdraw his guilty plea, and he will remain bound to
25 fulfill all of the obligations under this Plea and Cooperation
26 Agreement. The defendant understands that neither the prosecutor,
27
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1 defense counsel, nor the Court can make a binding prediction or
2 promise regarding the sentence he will receive.

3
4 **II.**

5 **DEFENDANT'S OBLIGATIONS**

6 **A. Waiver of Indictment and Guilty Plea:** The defendant will
7 waive indictment by grand jury, waive venue, and plead guilty to a
8 one-count Information, substantially in the form attached hereto as
9 Exhibit B, charging him with conspiring to rig bids in violation of
10 15 U.S.C. § 1. The defendant agrees that he is, in fact, guilty of
11 those charges and that the facts set forth in the Factual Basis
12 attached hereto as Exhibit A are true and accurate.

13
14 **B. Restitution:** The Mandatory Victim Restitution Act requires
15 the Court to order restitution to the victims of certain offenses.
16 The government and defendant agree to recommend that the Court order
17 defendant to pay restitution in the amount of \$214,000. Payment
18 should be at such times and in such amounts as ordered by the Court,
19 and should be by cashier's or certified check made payable to the
20 Clerk of the Court. The defendant understands that this Plea and
21 Cooperation Agreement is voidable by the government if he fails to
22 pay the restitution as ordered by the Court. Defendant further
23 agrees that he will not seek to discharge any restitution obligation
24 or any part of such obligation in any bankruptcy proceeding.

25
26 **C. Special Assessment:** The defendant agrees to pay a special
27 assessment of \$100 immediately before the sentencing hearing by
28

1 delivering a check or money order to the United States Probation
2 Office payable to the United States District Court.

3 D. Agreement to Cooperate: The defendant agrees to cooperate
4 fully with the government and any other federal, state, or local law
5 enforcement agency, as directed by the government. As used in this
6 Agreement, "cooperation" requires the defendant: (1) to respond
7 truthfully and completely to all questions, whether in interviews,
8 in correspondence, telephone conversations, before a grand jury, or
9 at any trial or other court proceeding; (2) to attend all meetings,
10 grand jury sessions, trials, and other proceedings at which the
11 defendant's presence is requested by the government or compelled by
12 subpoena or court order; (3) to produce voluntarily any and all
13 documents, records, or other tangible evidence requested by the
14 government; (4) not to participate in any criminal activity while
15 cooperating with the government; and (5) to disclose to the
16 government the existence and status of all money, property, or
17 assets, of any kind, derived from or acquired as a result of, or
18 used to facilitate the commission of, the defendant's illegal
19 activities or the illegal activities of any conspirators.

20 If the defendant commits any crimes or if any of the
21 defendant's statements or testimony prove to be knowingly false,
22 misleading, or materially incomplete, or if the defendant otherwise
23 violates this Plea and Cooperation Agreement in any way, the
24 government will no longer be bound by its representations to the
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1 defendant concerning the limits on criminal prosecution and
2 sentencing as set forth herein. The determination whether the
3 defendant has violated the Plea and Cooperation Agreement will be
4 under a preponderance of the evidence standard. If the defendant
5 violates the Plea and Cooperation Agreement, he shall thereafter be
6 subject to prosecution for any federal criminal violation of which
7 the government has knowledge, including but not limited to perjury,
8 false statements, and obstruction of justice. Because disclosures
9 pursuant to this Agreement will constitute a waiver of the Fifth
10 Amendment privilege against compulsory self-incrimination, any such
11 prosecution may be premised on statements and/or information
12 provided by the defendant. Moreover, any prosecutions that are not
13 time-barred by the applicable statute of limitations as of the date
14 of this Agreement may be commenced in accordance with this
15 paragraph, notwithstanding the expiration of the statute of
16 limitations between the signing of this Agreement and the
17 commencement of any such prosecutions. The defendant agrees to
18 waive all defenses based on the statute of limitations or delay of
19 prosecution with respect to any prosecutions that are not time-
20 barred as of the date of this Agreement.

21
22 If it is determined that the defendant has violated any
23 provision of this Agreement or if the defendant successfully moves
24 to withdraw his plea: (1) all statements made by the defendant to
25 the government or other designated law enforcement agents, or any
26 testimony given by the defendant before a grand jury or other
27
28

1 tribunal, whether before or after this Agreement, shall be
2 admissible in evidence in any criminal, civil, or administrative
3 proceedings hereafter brought against the defendant; and (2) the
4 defendant shall assert no claim under the United States
5 Constitution, any statute, Rule 11(f) of the Federal Rules of
6 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or
7 any other federal rule, that statements made by the defendant before
8 or after this Agreement, or any leads derived therefrom, should be
9 suppressed. By signing this Agreement, the defendant waives any and
10 all rights in the foregoing respects.
11

12 **E. Payment of Fine:** The defendant agrees to pay a criminal
13 fine of the mandatory minimum of \$20,000 if so ordered by the Court.
14 Defendant understands that the criminal fine ordered by the Court
15 may be greater or lesser than the mandatory minimum based upon the
16 defendant's ability to pay a criminal fine in addition to
17 restitution as agreed upon and set forth in this Plea and
18 Cooperation Agreement and as determined by the United States
19 Probation Office. The government's recommendation with respect to
20 any such criminal fine is set forth in paragraph III.(D) of this
21 Plea and Cooperation Agreement.
22

23
24 **III.**

25 **THE GOVERNMENT'S OBLIGATIONS**

26 **A. Incarceration Range:** The government will recommend that
27 the defendant be sentenced to the bottom of the applicable Guideline
28

1 range for his offense, as determined by the United States Probation
2 Office.

3 **B. Acceptance of Responsibility:** The government agrees that a
4 three-level reduction in defendant's offense level for his full and
5 clear demonstration of acceptance of responsibility is appropriate
6 under United States Sentencing Guidelines (U.S.S.G.) § 3E1.1, will
7 not oppose such a reduction, and will so move under § 3E1.1(b), so
8 long as the defendant pleads guilty, meets with and assists the
9 probation officer in the preparation of the pre-sentence report, is
10 truthful and candid with the probation officer and the Court, and
11 does not otherwise engage in conduct that constitutes obstruction of
12 justice within the meaning of U.S.S.G. § 3C1.1, either in the
13 preparation of the pre-sentence report or during the sentencing
14 proceeding.
15

16 **C. Reduction of Sentence for Cooperation:** The government
17 agrees to recommend at the time of sentencing that the defendant's
18 sentence of imprisonment be reduced to reflect his substantial
19 assistance to the government in the investigation and prosecution of
20 others, pursuant to U.S.S.G. § 5K1.1. The defendant understands
21 that he must comply with paragraph II(D) of this Plea and
22 Cooperation Agreement. The defendant understands that the
23 government's recommended reduction in his sentence will depend upon
24 the level of assistance the government determines that the defendant
25 has provided. The defendant further understands that a motion
26
27
28

1 pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is not
2 binding on the Court.

3 Other than as set forth above, the government agrees that any
4 incriminating information provided by the defendant during his
5 cooperation will not be used in determining the applicable Guideline
6 range in his case, pursuant to U.S.S.G. § 1B1.8.
7

8 D. Fine: The government agrees to recommend that the defendant
9 be ordered to pay the mandatory minimum fine of \$20,000 pursuant to
10 U.S.S.G. § 2R1.1(c)(1), or other amount as recommended by the United
11 States Probation Office.

12 IV.
13

14 ELEMENTS OF THE OFFENSE

15 Had this case gone to trial, the government would have to prove
16 beyond a reasonable doubt the following elements:

17 First, that the defendant entered into a conspiracy;

18 Second, that the conspiracy was an unreasonable restraint of
19 trade; and

20 Third, that the conspiracy was in or affected interstate
21 commerce in the United States.
22

23 V.
24

25 MAXIMUM SENTENCE

26 A. Maximum Penalty: The maximum sentence the Court can impose
27 for a violation of 15 U.S.C. § 1 is ten years incarceration; a fine
28 in an amount equal to the greatest of (1) \$1,000,000, (2) twice the

1 gross pecuniary gain the conspirators derived from the crime, or (3)
2 twice the gross pecuniary loss caused to the victims of the crime by
3 the conspirators; a three-year period of supervised release; and a
4 special assessment of \$100.

5 **B. Violations of Supervised Release:** The defendant
6 understands that if he violates a condition of supervised release at
7 any time during the term of supervised release, the Court may revoke
8 the term of supervised release and require the defendant to serve up
9 to two additional years of imprisonment.

11 VI.

12 **SENTENCING DETERMINATION**

13 **A. Statutory Authority:** The defendant understands that the
14 Court must consult the Federal Sentencing Guidelines (as promulgated
15 by the Sentencing Commission pursuant to the Sentencing Reform Act
16 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as
17 modified by United States v. Booker and United States v. Fanfan,
18 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account
19 when determining a final sentence. The defendant understands that
20 the Court will determine a non-binding and advisory guideline
21 sentencing range for this case pursuant to the Sentencing
22 Guidelines. The defendant further understands that the Court will
23 consider whether there is a basis for departure from the guideline
24 sentencing range (either above or below the guideline sentencing
25 range) because there exists an aggravating or mitigating
26
27
28

circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. The defendant further understands that the Court, after consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

B. Stipulations Affecting Guidelines Calculations: The government and the defendant agree that there is no material dispute as to the following sentencing guidelines variables and therefore stipulate and agree to the following:

§ 2R1.1(a)	Base Offense Level	12
(b) (1)	Bid Rigging	+1
(b) (2) (B)	Volume of Commerce > \$1 million	+2
	Total	15
(c) (1)	Fine 1 - 5% of \$5.9 million	

The Guidelines calculation results in a jail term of 18 to 24 months and a fine between \$59,000 and \$295,000.

1. Aggravating Role in Offense: Because the defendant served as an organizer, leader, manager, or supervisor with respect to the criminal activity charged, pursuant to § 3B1.1(c), the defendant's offense level is increased by 2 levels.

2. Total Offense Level: Pursuant to the foregoing stipulations, defendant's total offense level is 17.

3. Acceptance of Responsibility: Pursuant to § 3E1.1 and

1 as described in more detail in paragraph III(B) above, the
2 defendant's total offense level is decreased by three levels because
3 of his acceptance of responsibility. The Adjusted Total Offense
4 Level is therefore 14.

5
6 4. Criminal History: The parties agree that the
7 defendant's criminal history is to be determined by United States
8 Probation.

9 5. Departures or Other Enhancements or Reductions: The
10 parties stipulate and agree that they will not seek or argue in
11 support of any other specific offense characteristics, Chapter Three
12 adjustments, or cross-references, other than those contemplated in
13 the foregoing stipulations. Both parties stipulate and agree not to
14 move for, or argue in support of, any departure from the Sentencing
15 Guidelines, or any deviance or variance from the Sentencing
16 Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct.
17 738 (2005), except pursuant to U.S.S.G. § 5K1.1. If either party
18 breaches this provision, the other party shall be relieved of all of
19 its obligations under this Plea and Cooperation Agreement.
20

21 VII.

22 WAIVERS

23
24 A. Waiver of Constitutional Rights: The defendant understands
25 that by pleading guilty he is waiving the following constitutional
26 rights: (a) to plead not guilty and to persist in that plea if
27 already made; (b) to be tried by a jury; (c) to be assisted at trial
28

1 by an attorney, who would be appointed if necessary; (d) to subpoena
2 witnesses to testify on his behalf; (e) to confront and cross-
3 examine witnesses against him; and (f) not to be compelled to
4 incriminate himself.

5 **B. Waiver of Appeal and Collateral Attack:** The defendant
6 understands that the law gives him a right to appeal his conviction
7 and sentence. He agrees as part of his plea, however, to give up
8 the right to appeal the conviction and the right to appeal any
9 aspect of the sentence imposed in this case so long as his sentence
10 is no longer than the top of the Sentencing Guidelines range
11 determined by the Court, consistent with the stipulations set forth
12 above about the Sentencing Guidelines variables.
13

14 Regardless of the sentence he receives, the defendant also
15 gives up any right he may have to bring a post-appeal attack on his
16 conviction or his sentence. He specifically agrees not to file a
17 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or
18 sentence.
19

20 If the defendant ever attempts to vacate his plea, dismiss the
21 underlying charges, or reduce or set aside his sentence on any of
22 the counts to which he is pleading guilty, the government shall have
23 the right (1) to prosecute the defendant on any of the counts to
24 which he pleaded guilty; (2) to reinstate any counts that may be
25 dismissed pursuant to this Plea and Cooperation Agreement; and (3)
26 to file any new charges that would otherwise be barred by this Plea
27
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1 and Cooperation Agreement. The decision to pursue any or all of
2 these options is solely in the discretion of the United States
3 Attorney's Office and the United States Department of Justice,
4 Antitrust Division. By signing this Plea and Cooperation Agreement,
5 the defendant agrees to waive any objections, motions, and defenses
6 he might have to the government's decision. In particular, he
7 agrees not to raise any objections based on the passage of time with
8 respect to such counts, including, but not limited to, any statutes
9 of limitation or any objections based on the Speedy Trial Act or the
10 Speedy Trial Clause of the Sixth Amendment.
11

12 C. Waiver of Attorneys' Fees and Costs: The defendant agrees
13 to waive all rights under the "Hyde Amendment," Section 617, P.L.
14 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
15 litigation expenses in connection with the investigation and
16 prosecution of all charges in the above-captioned matter and of any
17 related allegations.
18

19 VIII.

20 ENTIRE PLEA AND COOPERATION AGREEMENT

21 Other than this Plea and Cooperation Agreement, no agreement,
22 understanding, promise, or condition between the government and the
23 defendant exists, nor will such agreement, understanding, promise,
24 or condition exist unless it is committed to writing and signed by
25

26 //

27 //

1 the defendant, counsel for the defendant, and counsel for the United
2 States.

3
4 IX.

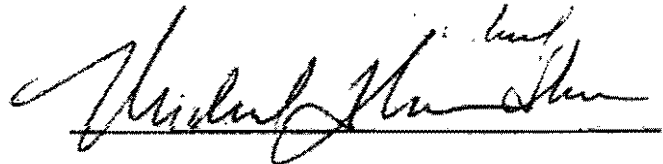
5 APPROVALS AND SIGNATURES

6 A. Defense Counsel: I have read this Plea and Cooperation
7 Agreement and have discussed it fully with my client. The Plea and
8 Cooperation Agreement accurately and completely sets forth the
9 entirety of the agreement. I concur
10 in my client's decision to plead guilty as set forth in this Plea
11 and Cooperation Agreement.

12
13 DATED:

March 30, 2010

April 16, 2010



14 Michael Thorman, Attorney for
15 Defendant

16 B. Defendant: I have read this Plea and Cooperation Agreement
17 and carefully reviewed every part of it with my attorney. I
18 understand it, and I voluntarily agree to it. Further, I have
19 consulted with my attorney and fully understand my rights with
20 respect to the provisions of the Sentencing Guidelines that may
21 apply to my case. No other promises or inducements have been made
22 to me, other than those contained in this Plea and Cooperation
23 Agreement. In addition, no one has threatened or forced me in any
24 way to enter into this Plea and Cooperation Agreement. Finally, I
25

26 //
27

28 //

1 am satisfied with the representation of my attorney in this case.

2
3 DATED: 3/30/10

4 Anthony B. Ghio ^{4/16/10}
Anthony B. Ghio, Defendant

5
6
7 C. Attorneys for United States: The undersigned accept and
8 agree to this Plea and Cooperation Agreement on behalf of the
9 government.

10
11 DATED: April 16, 2010

BENJAMIN B. WAGNER
United States Attorney

12
13
14 By: Robin Taylor

15 ROBIN R. TAYLOR
16 RUSSELL L. CARLBERG
17 Assistant U.S. Attorneys

18
19 CHRISTINE A. VARNEY
20 Assistant Attorney General

21
22 By: Barbara J. Nelson

23 BARBARA J. NELSON
24 RICHARD B. COHEN
25 ALBERT B. SAMBAT
26 Trial Attorneys
27 U.S. Department of Justice
28 Antitrust Division

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EXHIBIT "A"
Factual Basis for Plea

At trial, the government would prove the following facts beyond a reasonable doubt:

Beginning in or about April 2009 and continuing until in or about October 2009 (relevant period), defendant participated in a conspiracy to rig bids at public real estate auctions held in San Joaquin County, California, located in the Eastern District of California. The primary purpose of this conspiracy was to suppress and restrain competition and obtain selected real estate offered at San Joaquin County public auctions at non-competitive prices. During the relevant period, defendant and his co-conspirators reached agreements not to bid against one another and to allocate properties among themselves. To carry out their agreements, defendant and his co-conspirators refrained from bidding or refrained from bidding up the price for auctioned properties. In many instances, defendant and his co-conspirators held private auctions, open only to members of the conspiracy, to rebid the property. Defendant and his co-conspirators awarded the property to the conspirators who submitted the highest bid at the private auctions. Defendant and his co-conspirators distributed the proceeds of the private auctions as payoffs to the other, non-successful bidders in the private auction, based upon a predetermined formula agreed upon by the members of the conspiracy, for refraining from bidding on the property at the public auction.

During the relevant period, the business activities of the defendant and co-conspirators were within the flow of, and substantially affected, interstate trade and commerce. For example, mortgage holders located in states other than California held mortgages, appointed trustees, and received proceeds from the public auctions that were subject to the bid-rigging agreement.