

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

FILED

JUN 24 2010

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY
DEPUTY CLERK

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THEODORE B. HUTZ,

Defendant.

2:10 - CR - 0238 EG

No.

PLEA and COOPERATION AGREEMENT

I.

INTRODUCTION

A. **Scope of Agreement:** The Information to be filed in this case charges the defendant, THEODORE B. HUTZ, 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 the Eastern District of
3 California, in unreasonable restraint of interstate trade and
4 commerce, in violation of the Sherman Act, 15 U.S.C. § 1. This
5 document contains the complete Plea and Cooperation Agreement
6 between the United States Attorney's Office for the Eastern District
7 of California and the United States Department of Justice, Antitrust
8 Division (collectively the "government"), and the defendant
9 regarding this case. This Plea and Cooperation Agreement is limited
10 to the United States Attorney's Office for the Eastern District of
11 California and the United States Department of Justice, Antitrust
12 Division, and cannot bind any other federal, state, or local
13 prosecuting, administrative, or regulatory 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 government,
27 defense counsel, nor the Court can make a binding prediction or
28

1 promise regarding the sentence he will receive.

2 II.

3 DEFENDANT'S OBLIGATIONS

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

11 B. **Restitution:** The Mandatory Victim Restitution Act requires
12 the Court to order restitution to the victims of certain offenses.
13 The government and defendant agree to recommend that the Court order
14 defendant to pay restitution in the amount of \$96,500. Payment
15 should be made at such times and in such amounts as ordered by the
16 Court, and should be by cashier's or certified check made payable to
17 the Clerk of the Court. The defendant understands that this Plea
18 and Cooperation Agreement is voidable by the government if he fails
19 to pay the restitution as ordered by the Court. Defendant further
20 agrees that he will not seek to discharge any restitution obligation
21 or any part of such obligation in any bankruptcy proceeding.

22 C. **Special Assessment:** The defendant agrees to pay a special
23 assessment of \$100 immediately before the sentencing hearing by
24 delivering a check or money order to the United States Probation
25 Office payable to the United States District Court.

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

19
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
25 defendant concerning the limits on criminal prosecution and
26 sentencing as set forth herein. The determination whether the
27 defendant has violated the Plea and Cooperation Agreement will be
28

1 under a preponderance-of-the-evidence standard. If the defendant
2 violates the Plea and Cooperation Agreement, he shall thereafter be
3 subject to prosecution for any federal criminal violation of which
4 the government has knowledge, including but not limited to perjury,
5 false statements, and obstruction of justice. Because disclosures
6 pursuant to this Agreement will constitute a waiver of the Fifth
7 Amendment privilege against compulsory self-incrimination, any such
8 prosecution may be premised on statements and/or information
9 provided by the defendant. Moreover, any prosecutions that are not
10 time-barred by the applicable statute of limitations as of the date
11 of this Agreement may be commenced in accordance with this
12 paragraph, notwithstanding the expiration of the statute of
13 limitations between the signing of this Agreement and the
14 commencement of any such prosecutions. The defendant agrees to
15 waive all defenses based on the statute of limitations or delay of
16 prosecution with respect to any prosecutions that are not time-
17 barred as of the date of this Agreement.

20 If it is determined that the defendant has violated any
21 provision of this Agreement or if the defendant successfully moves
22 to withdraw his plea: (1) all statements made by the defendant to
23 the government or other designated law enforcement agents, or any
24 testimony given by the defendant before a grand jury or other
25 tribunal, whether before or after this Agreement, shall be
26 admissible in evidence in any criminal, civil, or administrative
27 proceedings hereafter brought against the defendant; and (2) the
28

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

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

20 **III.**

21 **THE GOVERNMENT'S OBLIGATIONS**

22
23 **A. Incarceration Range:** The government will recommend that
24 the defendant be sentenced to the bottom of the applicable Guideline
25 range for his offense, as determined by the United States Probation
26 Office.

27 **B. Acceptance of Responsibility:** The government agrees that a
28 two-level reduction in defendant's offense level for his full and

1 clear demonstration of acceptance of responsibility is appropriate
 2 under United States Sentencing Guidelines (U.S.S.G.) § 3E1.1, will
 3 not oppose such a reduction, and will so move under § 3E1.1(a), so
 4 long as the defendant pleads guilty, meets with and assists the
 5 probation officer in the preparation of the pre-sentence report, is
 6 truthful and candid with the probation officer and the Court, and
 7 does not otherwise engage in conduct that constitutes obstruction of
 8 justice within the meaning of U.S.S.G. § 3C1.1, either in the
 9 preparation of the pre-sentence report or during the sentencing
 10 proceeding.
 11

12 C. Reduction of Sentence for Cooperation: The government
 13 agrees to recommend at the time of sentencing that the defendant's
 14 sentence of imprisonment be reduced to reflect his substantial
 15 assistance to the government in the investigation and prosecution of
 16 others, pursuant to U.S.S.G. § 5K1.1. The defendant understands
 17 that he must comply with paragraph II. D. of this Plea and
 18 Cooperation Agreement. The defendant understands that the
 19 government's recommended reduction in his sentence will depend upon
 20 the level of assistance the government determines that the defendant
 21 has provided. The defendant further understands that a motion
 22 pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is not
 23 binding on the Court.
 24
 25

26 Other than as set forth above, the government agrees that any
 27 incriminating information provided by the defendant during his
 28 cooperation will not be used in determining the applicable Guideline

1 range in his case, pursuant to U.S.S.G. § 1B1.8.

2 **D. Fine:** The government agrees to recommend that the defendant
3 be ordered to pay the mandatory minimum fine of \$20,000 pursuant to
4 U.S.S.G. § 2R1.1(c)(1), or other amount as recommended by the United
5 States Probation Office.
6

7 **IV.**

8 **ELEMENTS OF THE OFFENSE**

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

11 First, that the defendant entered into a conspiracy;

12 Second, that the conspiracy was an unreasonable restraint of
13 trade; and
14

15 Third, that the conspiracy was in or affected interstate
16 commerce in the United States.

17 **V.**

18 **MAXIMUM SENTENCE**

19 **A. Maximum Penalty:** The maximum sentence the Court can impose
20 for a violation of 15 U.S.C. § 1 is ten years incarceration; a fine
21 in an amount equal to the greatest of (1) \$1,000,000, (2) twice the
22 gross pecuniary gain the conspirators derived from the crime, or (3)
23 twice the gross pecuniary loss caused to the victims of the crime by
24 the conspirators; a three-year period of supervised release; and a
25 special assessment of \$100.
26

27 **B. Violations of Supervised Release:** The defendant
28 understands that if he violates a condition of supervised release at

1 any time during the term of supervised release, the Court may revoke
2 the term of supervised release and require the defendant to serve up
3 to two additional years of imprisonment.

4
5 VI.

6 SENTENCING DETERMINATION

7 A. Statutory Authority: The defendant understands that the
8 Court must consult the Federal Sentencing Guidelines (as promulgated
9 by the Sentencing Commission pursuant to the Sentencing Reform Act
10 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as
11 modified by United States v. Booker and United States v. Fanfan,
12 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account
13 when determining a final sentence. The defendant understands that
14 the Court will determine a non-binding and advisory guideline
15 sentencing range for this case pursuant to the Sentencing
16 Guidelines. The defendant further understands that the Court will
17 consider whether there is a basis for departure from the guideline
18 sentencing range (either above or below the guideline sentencing
19 range) because there exists an aggravating or mitigating
20 circumstance of a kind, or to a degree, not adequately taken into
21 consideration by the Sentencing Commission in formulating the
22 Guidelines. The defendant further understands that the Court, after
23 consultation and consideration of the Sentencing Guidelines, must
24 impose a sentence that is reasonable in light of the factors set
25 forth in 18 U.S.C. § 3553(a).

26
27
28 //

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) (A)	Volume of Commerce > \$1 million	+2
	Total	15
(c) (1)	Fine 1 - 5% of \$6 million	

The Guidelines calculation results in a jail term of 18 to 24 months and a fine between \$60,000 and \$300,000.

1. Acceptance of Responsibility: Pursuant to § 3E1.1 and as described in more detail in paragraph III. B. above, the defendant's total offense level is decreased by two levels because of his acceptance of responsibility. The Adjusted Total Offense Level is therefore 13.

2. Criminal History: The parties agree that the defendant's criminal history is to be determined by the United States Probation Office.

3. Departures or Other Enhancements or Reductions: The parties stipulate and agree that they will not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments, departures, or cross-references, other than those contemplated in the foregoing stipulations. Defense counsel may argue for a variance or deviation from the Sentencing Guidelines

1 under 18 U.S.C. § 3553(a). The government reserves its right to
2 oppose such deviation or variance. If either party breaches this
3 provision, the other party shall be relieved of all of its
4 obligations under this Plea and Cooperation Agreement.

5
6 **VII.**

7 **WAIVERS**

8 **A. Waiver of Constitutional Rights:** The defendant understands
9 that by pleading guilty he is waiving the following constitutional
10 rights: (a) to plead not guilty and to persist in that plea if
11 already made; (b) to be tried by a jury; (c) to be assisted at trial
12 by an attorney, who would be appointed if necessary; (d) to subpoena
13 witnesses to testify on his behalf; (e) to confront and cross-
14 examine witnesses against him; and (f) not to be compelled to
15 incriminate himself.
16

17 **B. Waiver of Appeal and Collateral Attack:** The defendant
18 understands that the law gives him a right to appeal his conviction
19 and sentence. He agrees as part of his plea, however, to give up
20 the right to appeal the conviction and the right to appeal any
21 aspect of the sentence imposed in this case so long as his sentence
22 is no longer than the top of the Sentencing Guidelines range
23 determined by the Court, consistent with the stipulations set forth
24 above about the Sentencing Guidelines variables.
25

26 Regardless of the sentence he receives, the defendant also
27 gives up any right he may have to bring a post-appeal attack on his
28 conviction or his sentence. He specifically agrees not to file a

1 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or
2 sentence.

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

22 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees
23 to waive all rights under the "Hyde Amendment," Section 617, P.L.
24 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
25 litigation expenses in connection with the investigation and
26 prosecution of all charges in the above-captioned matter and of any
27 related allegations.
28

VIII.

ENTIRE PLEA AND COOPERATION AGREEMENT

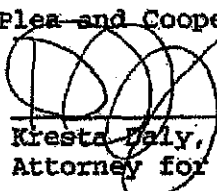
Other than this Plea and Cooperation Agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the government.

IX.

APPROVALS AND SIGNATURES

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

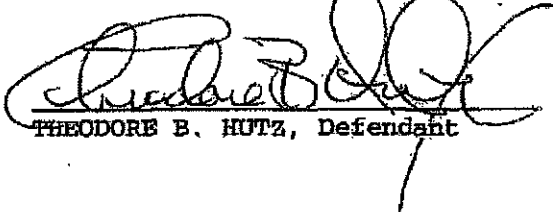
DATED: 22 June 2010


Kresta Daly,
Attorney for Defendant

B. Defendant: I have read this Plea and Cooperation Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea and Cooperation

1 Agreement. In addition, no one has threatened or forced me in any
2 way to enter into this Plea and Cooperation Agreement. Finally, I
3 am satisfied with the representation of my attorney in this case.
4

5 DATED: 6/23/10


THEODORE B. HUTZ, Defendant

6
7
8
9 C. Attorneys for the Government: The undersigned accept and
10 agree to this Plea and Cooperation Agreement on behalf of the
11 government.
12

13 DATED: 6/23/10

BENJAMIN B. WAGNER
United States Attorney

14
15
16 By: Robin Taylor

ROBIN R. TAYLOR
RUSSELL L. CARLBERG
Assistant U.S. Attorneys

17
18
19
20
21 CHRISTINE A. VARNEY
Assistant Attorney General

22
23 By: Robin Taylor for

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

EXHIBIT "A"
Factual Basis for Plea

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

Beginning in or about February 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.