

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)

)

)

Criminal No. 1:13-cr-506

v.)

)

Violations: 15 U.S.C. § 1

)

18 U.S.C. § 1349

AMY JAMES,)

)

Defendant.)

PLEA AGREEMENT

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

RIGHTS OF DEFENDANT

1. The defendant understands her rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against her;
 - (d) to have a trial by jury, at which she would be presumed not guilty of the charge and the United States would have to prove every

essential element of the charged offense beyond a reasonable doubt for her to be found guilty;

(e) to confront and cross-examine witnesses against her and to subpoena witnesses in her defense at trial;

(f) not to be compelled to incriminate herself;

(g) to appeal her conviction, if she is found guilty; and

(h) to appeal the imposition of sentence against her.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is not in excess of a term of imprisonment of twelve (12) months, a three-year term of supervised release, a criminal fine of \$3,000, and restitution of \$55,200. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies she may otherwise have on appeal or

collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a two-count Information to be filed in the United States District Court for the Northern District of Georgia. Count One of the Information charges the defendant with participating in a conspiracy to suppress and eliminate competition by rigging bids for the purchase of real estate at public foreclosure auctions in DeKalb County, in the Northern District of Georgia, beginning at least as early as December 6, 2005, and continuing until at least January 23, 2009, in violation of the Sherman Act, 15 U.S.C. § 1. Count Two of the Information charges the defendant with participating in a conspiracy to commit mail fraud in relation to real estate foreclosure auctions in DeKalb County, in the Northern District of Georgia, beginning at least as early as December 6, 2005, and continuing until at least January 23, 2009, in violation of 18 U.S.C. § 1349.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11.

ELEMENTS OF THE OFFENSE

4. The defendant understands that the United States must prove the following elements:

(a) For Count One, charging a violation of 15 U.S.C. § 1:

(1) There was a combination or conspiracy to restrain trade during the time alleged in the Information;

(2) The defendant knowingly joined the conspiracy; and

(3) The activity was in the flow of or substantially affected interstate or foreign commerce.

(b) For Count Two, charging a violation of 18 U.S.C. § 1349:

(1) Two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit mail fraud; and

(2) The defendant knew the unlawful purpose of the plan and willfully joined in it.

The elements of the underlying offense of mail fraud, Title 18, United States Code, Section 1341, are as follows:

(1) The defendant knowingly devised or participated in a scheme to defraud someone, or obtain money or property,

using false and fraudulent pretenses, representations, or promises;

(2) The false and fraudulent pretenses, representations, or promises were about a material fact;

(3) The defendant intended to defraud someone; and

(4) The defendant used the United States Postal Service or any private or commercial interstate carrier by mailing or by causing to be mailed something meant to help carry out the scheme to defraud.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against her upon conviction for a violation of Section One of the Sherman Antitrust Act, in Count One, is:

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

(b) a fine in an amount equal to the greatest of (1) \$1 million,

(2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d));
and

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

6. The defendant understands that the statutory maximum penalty which may be imposed against her upon conviction for a violation of 18 U.S.C. § 1349, in Count Two, is:

(a) a term of imprisonment for twenty (20) years (18 U.S.C. § 1341);

(b) a fine in an amount equal to the greatest of (1) \$250,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(b) and (d));

(c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and U.S.S.G. §5D1.2(a)(2)); and

(d) forfeiture of any property constituting or derived from proceeds obtained as the result of the violation (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)).

7. In addition, the defendant understands that:

(a) pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii), the Court will order her to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for each charged crime, totaling \$200.00.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines in effect on the date of sentencing unless those Guidelines provide for greater punishment than the version in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines in effect on the last date that the offense of conviction was committed. The parties agree there is *no ex post facto* issue under the November 1, 2013 Guidelines. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Guidelines

determinations will be made by the Court. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.

§ 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant has provided to date to the United States pursuant to a proffer letter or provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce or fraud loss attributable to the defendant in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

9. The United States and the defendant agree to recommend that the following sentencing guidelines shall apply:

(a) For Count One, the total volume of commerce attributable to the defendant under U.S.S.G. §§2R1.1 is \$1,048,156;

(b) For Count One (15 U.S.C. § 1)

(i) Base Offense Level, U.S.S.G. §2R1.1(a) 12

(ii) Conduct involved agreement to submit
non-competitive bids, U.S.S.G. §2R1.1(b)(1) +1

(iii)	Volume of commerce adjustment,	
	U.S.S.G. §2R1.1	+2
(iv)	Offense Level Total	15
(v)	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)	\$20,000 - \$52,407.80

(c) For Count Two, the fraud loss attributable to the defendant under U.S.S.G. §2B1.1 is \$131,450;

(d)	For Count Two (18 U.S.C. § 1349)	
(i)	Base Offense Level, U.S.S.G. §§2X1.1(a),	
	2B1.1(a)(1)	7
(ii)	Loss > \$120,000, U.S.S.G. §2B1.1(b)(1)(F)	+10
(iii)	Ten (10) or More Victims,	
	U.S.S.G. §2b1.1(B)(2)(a)(i)	+2
(iv)	Offense Level Total	19
(v)	Fine, U.S.S.G. §5E1.2(c)(3)	\$6,000 to \$60,000

(e) Pursuant to U.S.S.G. §§3D1.2 and 3D1.3, Count One and Count Two involved offenses of the same general type to which different Guidelines apply; therefore the offense Guideline to be applied is the highest offense level;

(f) For the purposes of U.S.S.G. §3E1.1, a 3-level reduction of the offense level for the defendant's acceptance of responsibility is appropriate. However, should the United States obtain or receive additional evidence or information prior to sentencing that, in its sole discretion, it determines to be credible and materially in conflict with this provision, then the United States will no longer be bound by this provision;

(g) 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 defendant's Criminal History Category would be I. The parties understand that the defendant's Criminal History Category is determined by the Court; and

(h) Based on the foregoing, the defendant's adjusted offense level for the offenses to which she is pleading guilty is 16. The applicable Guidelines imprisonment range for offense level 16 is 21 to 27 months. The defendant's applicable Guidelines fine range is \$5,000 to \$50,000.

SENTENCING AGREEMENT

10. The United States and the defendant agree to recommend jointly that the Court require the defendant to pay restitution in the amount of

\$55,200.00, pursuant to 18 U.S.C. § 3663A(a)(1). The defendant agrees to pay any fine and/or restitution imposed by the Court to the Clerk of Court for eventual disbursement to the appropriate account and/or victim(s). The defendant agrees that the full fine and/or restitution amount shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in the custody or under the supervision of the Probation Office at any time, she agrees that the custodial agency and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution unless required to be approved by the court. The defendant understands that this payment schedule represents a minimum obligation and that, should the defendant's financial situation establish that she is able to pay more toward the fine and/or restitution, the government is entitled to pursue other sources of recovery of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the government deems appropriate.

11. The United States will not object to the defendant's request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum

Security Camp to serve her sentence and that the defendant be released following the imposition of sentence to allow her to self-surrender to the assigned prison facility on a specified date.

12. The defendant understands that the Court will order her to pay a \$200.00 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) prior to sentencing, and to pay any fine imposed as directed by the Court.

13. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 16 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. §5K1.1, for a downward departure from the applicable Guidelines fine and imprisonment ranges in this case because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law involving the purchase of real estate at public foreclosure auctions in DeKalb County, Georgia and any other federal investigations resulting therefrom.

14. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 16 of this Plea Agreement, and prior to sentencing in this case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and her commitment to prospective cooperation with the United

States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offenses, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until her cooperation is complete.

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

DEFENDANT'S COOPERATION

16. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the purchase of real estate at public foreclosure auctions in DeKalb County, Georgia, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively "Federal Proceeding"). Federal Proceeding includes, but is not limited to, an

investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding.

The full, truthful, and continuing cooperation of the defendant will include, but not be limited to:

(a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States in connection with any Federal Proceeding;

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

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

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that she may have that is related to any Federal Proceeding; and

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

GOVERNMENT'S AGREEMENT

17. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 16 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust or mail fraud conspiracy involving the purchase of real estate at public foreclosure auctions in DeKalb County, Georgia ("Relevant Offense").

The non-prosecution terms of this paragraph do not apply to (a) any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621, 1622), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), making a false statement (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503, et seq.), contempt (18 U.S.C. §§ 401 - 402), or conspiracy to commit such offenses; (b) civil matters of any kind; (c) any violation of the federal tax or securities laws, or conspiracy to commit such offenses; or (d) any crime of violence.

REPRESENTATION BY COUNSEL

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

VOLUNTARY PLEA

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

VIOLATION OF PLEA AGREEMENT

20. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and continuing cooperation, as defined in Paragraph 16 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or her counsel in writing by personal or overnight delivery, email, or facsimile transmission and may also notify her counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the

investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be treated as if it had not expired for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

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

ENTIRETY OF AGREEMENT

22. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the

criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

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

DATED: 2/20/2014 Respectfully submitted,

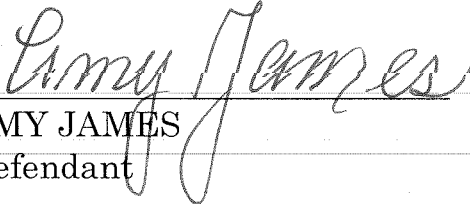
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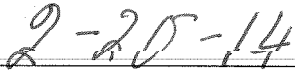
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I have read the Criminal Information against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the United States would have to prove to convict me at a trial. I have

read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my sentence or challenging my sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the United States toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.



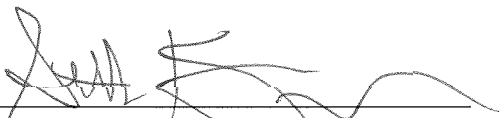
AMY JAMES
Defendant



DATE

I am Amy James' lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making

an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.



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2/20/14

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