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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA

) No. CR 11-00800 CRB

18 v.

) **PLEA AGREEMENT**

19 TROY KENT,

20 Defendant.

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

24 RIGHTS OF DEFENDANT

- 25 1. The defendant understands his rights:
26 (a) to be represented by an attorney;
27 (b) to be charged by Indictment;
28 (c) to plead not guilty to any criminal charge brought against him;

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

4 (e) to confront and cross-examine witnesses against him and to subpoena
5 witnesses in his defense at trial;

6 (f) not to be compelled to incriminate himself;

7 (g) to appeal his conviction, if he is found guilty; and

8 (h) to appeal the imposition of sentence against him.

9 AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

10 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
11 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any
12 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
13 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the
14 sentence imposed by the Court if that sentence is consistent with or below the Sentencing
15 Guidelines range stipulated by the parties in Paragraph 9 of this Plea Agreement, regardless of
16 how the sentence is determined by the Court. This agreement does not affect the rights or
17 obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph,
18 however, shall act as a bar to the defendant perfecting any legal remedies he may otherwise have
19 on appeal or collateral attack respecting claims of ineffective assistance of counsel or
20 prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment
21 at arraignment and plead guilty to a two-count Information to be filed in the United States
22 District Court for the Northern District of California. Count One of the Information charges the
23 defendant with participating in a conspiracy to suppress and restrain competition by rigging bids
24 to obtain title to selected real estate offered at San Mateo County, California public real estate
25 foreclosure auctions in the Northern District of California, in unreasonable restraint of interstate
26 trade and commerce, in violation of the Sherman Act, 15 U.S.C. § 1, beginning as early as May
27 2010 and continuing until in or about July 2010. Count Two of the Information charges the

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1 defendant with conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349, in San Mateo
2 County, California from as early as May 2010 until in or about July 2010.

3 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
4 the criminal charges described in Paragraph 2 above and will make a factual admission of guilt to
5 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United
6 States agrees that at the arraignment, it will stipulate to the release of the defendant on his
7 personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

8 FACTUAL BASIS FOR CHARGED OFFENSES

9 4. I agree that I am guilty of the offenses to which I will plead guilty, and I agree
10 that the following facts are true:

11 (a) As to Count One of the Information:

12 Beginning as early as May 2010 and continuing until in or about July 2010 (“relevant
13 period”), the defendant participated in a conspiracy to rig bids to obtain selected real estate at
14 public real estate foreclosure auctions held in San Mateo County, California, located in the
15 Northern District of California. The primary purpose of this conspiracy was to suppress and
16 restrain competition to obtain title to selected real estate offered at San Mateo County public real
17 estate foreclosure auctions at non-competitive prices. During the relevant period, the defendant
18 and his co-conspirators agreed not to bid against one another and to allocate title to the selected
19 real estate among themselves. To carry out their conspiracy, the defendant and his
20 co-conspirators refrained from or stopped bidding on selected auctioned real estate.

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

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

1 (b) As to Count Two of the Information:

2 During the relevant period, the defendant and his co-conspirators willfully and knowingly
3 agreed to devise and intended to devise and to participate in a scheme or artifice to defraud
4 financial institutions, homeowners, and others, and to obtain money and property by means of
5 materially false and fraudulent pretenses, representations, and promises. The scheme to defraud
6 entailed making payoffs to obtain title to selected real estate at fraudulently suppressed prices,
7 receiving payoffs and diverting money to co-conspirators and away from the mortgage holders
8 and others with a legal interest in select properties sold at public real estate foreclosure auctions
9 in San Mateo County, California (“mortgage holders”). Among other things, the defendant and
10 his co-conspirators executed a deceptive scheme by negotiating payoffs with one or more co-
11 conspirators not to compete; in some instances, falsely participating in foreclosure auctions to
12 create the appearance that they were bidding competitively when, in fact, they were not;
13 purchasing selected real estate at fraudulently suppressed prices; paying co-conspirators monies
14 that otherwise would have gone to mortgage holders; taking steps to conceal both the fact that
15 payoffs were made and the amounts of the payoffs; making and causing to be made false and
16 misleading statements on records of public auctions regarding the total purchase price of selected
17 real estate to trustees and others; and causing the fraudulently suppressed purchase price to be
18 reported and paid to the mortgage holders.

19 The defendant and others, for the purpose of executing the conspiracy described above
20 and attempting to do so, knowingly used and caused to be used the United States Postal Service
21 or private or commercial interstate carriers. For example, trustees used the United States mail
22 and Federal Express to transmit Trustee’s Deeds Upon Sale and other title documents to
23 participants in the conspiracy. These mailings were foreseeable to the defendant in the ordinary
24 course of business.

25 During the relevant period, the real estate that was the subject of this conspiracy was
26 located in the Northern District of California.

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POSSIBLE MAXIMUM SENTENCE

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

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

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

9 (c) a term of supervised release of not more than three years following any
10 term of imprisonment. If the defendant violates any condition of supervised release, the
11 defendant could be required to serve up to an additional two years in prison (18 U.S.C.
12 § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines
13 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

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

16 (a) a term of imprisonment for thirty years (18 U.S.C. § 1349);

17 (b) a fine of not more than \$1 million; and

18 (c) a term of supervised release of not more than five years following any
19 term of imprisonment. If the defendant violates any condition of supervised release, the
20 defendant could be required to serve up to an additional three years in prison (18 U.S.C.
21 § 3559(a)(2); 18 U.S.C. § 3583(b)(1) and (e)(3); and U.S.S.G. § 5D1.2(a)(1)).

22 7. In addition, the defendant understands that:

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

25 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the
26 defendant to pay a \$100 special assessment upon conviction for each charged crime, totaling
27 \$200.

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SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with 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 by a preponderance-of-the-evidence standard. 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 provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce or loss attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

9. The United States and the defendant agree that the following Sentencing Guidelines apply:

- (a) For Count One (15 U.S.C. § 1 – San Mateo County):
- | | | |
|------|--|----------------------|
| 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 (stipulated to be \$1,032,200), U.S.S.G. § 2R1.1(b)(2)(A): | +2 |
| iv. | Fine calculated as one to five percent of the volume of commerce (stipulated to be \$1,032,200), but not less than \$20,000, U.S.S.G. § 2R1.1(c)(1): | \$20,000 to \$51,610 |
| | Total: | 15 |

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1	(b)	For Count Two (18 U.S.C. § 1349 – San Mateo County):	
2	i.	Base Offense Level, U.S.S.G. § 2B1.1(a)(1):	7
3	ii.	Loss > \$70,000, U.S.S.G. § 2B1.1(b)(1)(E):	+8
4	iii.	Fine, U.S.S.G. § 5E1.2(c)(3):	\$4,000 to \$40,000
5			
6		Total:	15

7 Pursuant to U.S.S.G. § 3D1.3(b), the counts involve offenses of the same general type to which
8 different Guidelines apply; therefore, the offense Guideline to be applied is the highest offense
9 level.

10 10. The United States agrees that it will make a motion, pursuant to U.S.S.G. § 3E1.1,
11 for a downward adjustment of two levels for acceptance of responsibility due to the defendant's
12 timely notification of his intention to enter a guilty plea. Therefore, the ultimate Guidelines
13 calculations result in a combined offense level of 13 and a fine of \$3,000 to \$30,000.

14 11. The defendant and the United States do not agree as to the applicability of
15 U.S.S.G. § 3B1.2(b). Both parties are free to argue for or oppose its applicability at sentencing.

16 12. The defendant understands that the Court will order him to pay a special
17 assessment of \$100 per count (\$200 total) pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to
18 any fine imposed. The parties agree that there exists no aggravating or mitigating circumstance
19 of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing
20 Commission in formulating the Sentencing Guidelines justifying a departure pursuant to
21 U.S.S.G. § 5K2.0.

22 13. The Mandatory Victim Restitution Act requires the Court to order restitution to
23 the victims of certain offenses. The government and the defendant agree to recommend that the
24 Court order the defendant to pay restitution in the amount of \$6,193 pursuant to U.S.S.G.
25 § 5E1.1(a). The defendant understands that this Plea Agreement is voidable by the government
26 if he fails to pay the restitution as ordered by the Court. The defendant further agrees that he will
27 not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy
28 proceeding.

1 14. The United States and the defendant are not aware of any information that would
2 affect the defendant's Criminal History Category. If no other information were discovered, the
3 defendant's Criminal History Category would be I. The parties understand that the defendant's
4 Criminal History Category is determined by the Court.

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

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

1 defendant has violated any provision of this Plea Agreement, such a determination will release
2 the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not
3 entitle the defendant to withdraw his guilty plea once it has been entered. The defendant further
4 understands that, whether or not the United States files a motion pursuant to U.S.S.G. § 5K1.1,
5 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

6 17. Subject to the ongoing, full, and truthful cooperation of the defendant described in
7 Paragraph 19 of this Plea Agreement, and before sentencing in the case, the United States will
8 fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's
9 cooperation and his commitment to prospective cooperation with the United States' investigation
10 and prosecutions, all material facts relating to the defendant's involvement in the charged
11 offenses, and all other relevant conduct. To enable the Court to have the benefit of all relevant
12 sentencing information, the United States may request, and the defendant will not oppose, that
13 sentencing be postponed until his cooperation is complete.

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

19 DEFENDANT'S COOPERATION

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

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

4 (b) making himself available for interviews, not at the expense of the United
5 States, upon the request of attorneys and agents of the United States;

6 (c) responding fully and truthfully to all inquiries of the United States in
7 connection with any Federal Proceeding, without falsely implicating any person or intentionally
8 withholding any information, subject to the penalties of making false statements (18 U.S.C.
9 § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

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

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

18 GOVERNMENT'S AGREEMENT

19 20. Subject to the full, truthful, and continuing cooperation of the defendant described
20 in Paragraph 19 of this Plea Agreement, and upon the Court's acceptance of the guilty plea
21 called for by this Plea Agreement and the imposition of sentence, the United States will not bring
22 further criminal charges against the defendant for any act or offense committed before the date of
23 this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy or in violation
24 of any related criminal law involving the purchase of real estate at public foreclosure auctions in
25 the Northern District of California ("Relevant Offense"). The non-prosecution terms of this
26 paragraph do not apply to civil matters of any kind, to any violation of the federal tax or
27 securities laws, or to any crime of violence.

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1 the statute of limitations period for such offense shall be tolled for the period between the date of
2 the signing of this Plea Agreement and six months after the date the United States gave notice of
3 its intent to void its obligations under this Plea Agreement.

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

12 ENTIRETY OF AGREEMENT

13 25. This Plea Agreement constitutes the entire agreement between the United States
14 and the defendant concerning the disposition of the criminal charges in this case. This Plea
15 Agreement cannot be modified except in writing, signed by the United States and the defendant.

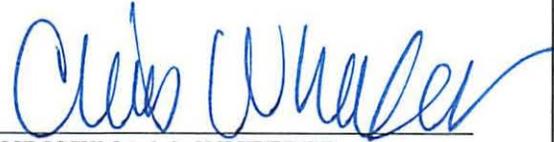
16 26. The undersigned attorneys for the United States have been authorized by the
17 Attorney General of the United States to enter this Plea Agreement on behalf of the United
18 States.

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27. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.



TROY KENT
Defendant



CHRISTINA M. WHEELER
JEANE HAMILTON
ALBERT B. SAMBAT
DAVID J. WARD
MANISH KUMAR
Trial Attorneys
U.S. Department of Justice
Antitrust Division

Dated: 2/1/12



PATRICK D. ROBBINS
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Dated: 2/1/12

Dated: 2/1/12