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FILED

JAN 28 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY AMS
DEPUTY CLERK

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14

15 UNITED STATES OF AMERICA,)
16)
17 Plaintiff,)
18 v.)
19 RICHARD W. NORTHCUTT,)
20 Defendant.)
21

2:11 - CR 0038 MCE
No.

PLEA and COOPERATION AGREEMENT

22 I.
23

24 INTRODUCTION

25 A. Scope of Agreement: The Information to be filed in this
26 case charges the defendant, RICHARD W. NORTHCUTT, with one count
27 of participating in a conspiracy to suppress and restrain
28 competition by rigging bids to obtain selected real estate

1 offered at San Joaquin County, California public real estate
2 auctions in the Eastern District of California in unreasonable
3 restraint of interstate trade and commerce, in violation of the
4 Sherman Act, 15 U.S.C. § 1, and with one count of conspiracy to
5 commit mail fraud in violation of 18 U.S.C. § 1349. This
6 document contains the complete Plea and Cooperation Agreement
7 between the United States Attorney's Office for the Eastern
8 District of California and the United States Department of
9 Justice, Antitrust Division (collectively the "government"), and
10 the defendant regarding this case. This Plea and Cooperation
11 Agreement is limited to the United States Attorney's Office for
12 the Eastern District of California and the United States
13 Department of Justice, Antitrust Division, and cannot bind any
14 other federal, state, or local prosecuting, administrative, or
15 regulatory authorities.
16
17

18 B. Court Not a Party: The Court is not a party to this
19 Plea and Cooperation Agreement. Sentencing is a matter solely
20 within the discretion of the Court, the Court is under no
21 obligation to accept any recommendations made by the government,
22 and the Court may in its discretion impose any sentence it deems
23 appropriate, up to and including the statutory maximum stated in
24 this Plea and Cooperation Agreement. If the Court should impose
25 any sentence up to the maximum established by the statute, the
26 defendant cannot, for that reason alone, withdraw his guilty
27 plea, and he will remain bound to fulfill all of the obligations
28

1 under this Plea and Cooperation Agreement. The defendant
2 understands that neither the government, defense counsel, nor the
3 Court can make a binding prediction or promise regarding the
4 sentence he will receive.

5
6 II.

7 DEFENDANT'S OBLIGATIONS

8 A. Waiver of Indictment and Guilty Plea: The defendant
9 will waive indictment by grand jury, waive venue, and plead
10 guilty to a two-count Information, substantially in the form
11 attached hereto as Exhibit B, charging him with conspiring to rig
12 bids in violation of 15 U.S.C. § 1 and conspiracy to commit mail
13 fraud in violation of 18 U.S.C. § 1349. The defendant agrees
14 that he is, in fact, guilty of those charges and that the facts
15 set forth in the Factual Basis attached hereto as Exhibit A are
16 true and accurate.

18 B. Restitution: The Mandatory Victim Restitution Act
19 requires the Court to order restitution to the victims of certain
20 offenses. Payment should be made at such times and in such
21 amounts as ordered by the Court, and should be by cashier's or
22 certified check made payable to the Clerk of the Court. The
23 government and defendant agree to recommend that the Court order
24 defendant to pay restitution in the amount of \$349,260. The
25 defendant understands that this Plea and Cooperation Agreement is
26 voidable by the government if he fails to pay the restitution as
27 ordered by the Court. Defendant further agrees that he will not
28

1 seek to discharge any restitution obligation or any part of such
2 obligation in any bankruptcy proceeding.

3 **C. Special Assessment:** The defendant agrees to pay a
4 special assessment of \$100 for each count (total of \$200)
5 immediately before the sentencing hearing by delivering a check
6 or money order to the United States Probation Office payable to
7 the United States District Court.
8

9 **D. Agreement to Cooperate:** The defendant agrees to
10 cooperate fully with the government and any other federal, state,
11 or local law enforcement agency, as directed by the government.
12 As used in this Agreement, "cooperation" requires the defendant:
13 (1) to respond truthfully and completely to all questions,
14 whether in interviews, in correspondence, telephone
15 conversations, before a grand jury, or at any trial or other
16 court proceeding; (2) to attend all meetings, grand jury
17 sessions, trials, and other proceedings at which the defendant's
18 presence is requested by the government or compelled by subpoena
19 or court order; (3) to produce voluntarily any and all documents,
20 records, or other tangible evidence requested by the government;
21 (4) not to participate in any criminal activity while cooperating
22 with the government; and (5) to disclose to the government the
23 existence and status of all money, property, or assets, of any
24 kind, derived from or acquired as a result of, or used to
25 facilitate the commission of, the defendant's illegal activities
26 or the illegal activities of any conspirators.
27
28

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

1 prosecutions that are not time-barred as of the date of this
2 Agreement.

3 If it is determined that the defendant has violated any
4 provision of this Agreement or if the defendant successfully
5 moves to withdraw his plea: (1) all statements made by the
6 defendant to the government or other designated law enforcement
7 agents, or any testimony given by the defendant before a grand
8 jury or other tribunal, whether before or after this Agreement,
9 shall be admissible in evidence in any criminal, civil, or
10 administrative proceedings hereafter brought against the
11 defendant; and (2) the defendant shall assert no claim under the
12 United States Constitution, any statute, Rule 11(f) of the
13 Federal Rules of Criminal Procedure, Rule 410 of the Federal
14 Rules of Evidence, or any other federal rule, that statements
15 made by the defendant before or after this Agreement, or any
16 leads derived therefrom, should be suppressed. By signing this
17 Agreement, the defendant waives any and all rights in the
18 foregoing respects.
19

20
21 **E. Payment of Fine:** The defendant agrees to pay a criminal
22 fine of \$20,000 if so ordered by the Court. Defendant
23 understands that the criminal fine ordered by the Court may be
24 based upon the defendant's ability to pay a criminal fine in
25 addition to restitution as agreed upon and set forth in this Plea
26 and Cooperation Agreement and as determined by the United States
27 Probation Office. The government's recommendation with respect
28

1 to any such criminal fine is set forth in paragraph III. D. of
2 this Plea and Cooperation Agreement.

3
4 **III.**

5 **THE GOVERNMENT'S OBLIGATIONS**

6 **A. Incarceration Range:** The government will recommend that
7 the defendant be sentenced to the bottom of the applicable
8 Guideline range for his offense, as determined by the United
9 States Probation Office.

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

22
23 **C. Reduction of Sentence for Cooperation:** The government
24 agrees to recommend at the time of sentencing that the
25 defendant's sentence of imprisonment be reduced to reflect his
26 substantial assistance to the government in the investigation and
27 prosecution of others, pursuant to U.S.S.G. § 5K1.1. The
28

1 defendant understands that he must comply with paragraph II. D.
2 of this Plea and Cooperation Agreement. The defendant
3 understands that the government's recommended reduction in his
4 sentence will depend upon the level of assistance the government
5 determines that the defendant has provided. The defendant
6 further understands that a motion pursuant to U.S.S.G. § 5K1.1 is
7 only a recommendation and is not binding on the Court.
8

9 Other than as set forth above, the government agrees that
10 any incriminating information provided by the defendant during
11 his cooperation will not be used in determining the applicable
12 Guideline range in his case, pursuant to U.S.S.G. § 1B1.8.
13

14 D. Fine: The government agrees to recommend that the
15 defendant be ordered to pay a fine of \$20,000 pursuant to
16 U.S.S.G. § 2R1.1(c)(1) or other amount as recommended by the
17 United States Probation Office.
18

19 IV.

20 ELEMENTS OF THE OFFENSE

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

23 For Count One, Sherman Act:

24 First, that the defendant entered into a conspiracy;

25 Second, that the conspiracy was an unreasonable restraint of
26 trade; and

27 Third, that the conspiracy was in or affected interstate
28 commerce in the United States.

1 For Count Two, Conspiracy to Commit Mail Fraud:

2 First, that the defendant knowingly devised or participated
3 in a conspiracy to defraud or to obtain money or property by
4 means of materially false pretenses, representations, or
5 promises;
6

7 Second, the defendant knew that the scheme was deceptive or
8 that the pretenses, representations, or promises were false;

9 Third, that the defendant did so with the intent to defraud;
10 and

11 Fourth, for the purpose of carrying out the scheme or
12 attempting to do so, the defendant knowingly used and caused to
13 be used the United States mails or private or commercial carrier
14 in the manner charged.
15

16 V.

17 MAXIMUM SENTENCE

18 A. Maximum Penalty: For Count One, the maximum sentence the
19 Court can impose for a violation of 15 U.S.C. § 1 is ten years
20 incarceration; a fine in an amount equal to the greatest of (1)
21 \$1,000,000, (2) twice the gross pecuniary gain the conspirators
22 derived from the crime, or (3) twice the gross pecuniary loss
23 caused to the victims of the crime by the conspirators; a three-
24 year period of supervised release; and a special assessment of
25 \$100. For Count Two, the maximum sentence the Court can impose
26 for a violation of 18 U.S.C. § 1349 is 30 years incarceration; a
27 fine of \$1,000,000; a five-year period of supervised release; and
28

1 a special assessment of \$100.

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

8 **VI.**

9 **SENTENCING DETERMINATION**

10 **A. Statutory Authority:** The defendant understands that the
11 Court must consult the Federal Sentencing Guidelines (as
12 promulgated by the Sentencing Commission pursuant to the
13 Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28
14 U.S.C. §§ 991-998, and as modified by United States v. Booker and
15 United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738 (2005)) and
16 must take them into account when determining a final sentence.
17 The defendant understands that the Court will determine a non-
18 binding and advisory Guideline sentencing range for this case
19 pursuant to the Sentencing Guidelines. The defendant further
20 understands that the Court will consider whether there is a basis
21 for departure from the Guideline sentencing range (either above
22 or below the Guideline sentencing range) because there exists an
23 aggravating or mitigating circumstance of a kind, or to a degree,
24 not adequately taken into consideration by the Sentencing
25 Commission in formulating the Guidelines. The defendant further
26 understands that the Court, after consultation and consideration
27
28

1 of the Sentencing Guidelines, must impose a sentence that is
2 reasonable in light of the factors set forth in 18 U.S.C.
3 § 3553(a).

4 **B. Stipulations Affecting Guidelines Calculations:** The
5 government and the defendant agree that there is no material
6 dispute as to the following Sentencing Guidelines variables and
7 therefore stipulate and agree to the following:
8

9 For Count One:

10	§ 2R1.1(a)	Base Offense Level	12
11	(b) (1)	Bid Rigging	+1
12	(b) (2) (B)	Volume of Commerce > \$10 million	+4
13		Total	17
14	(c) (1)	Fine 1 - 5% of \$11.7 million	

15
16 For Count Two:

17	§2B1.1(a) (1)	Base Offense Level	7
18	(b) (1) (D)	Loss > \$200,000	+12
19		Total	19

20 The Guidelines calculation results in an offense level of 19 for
21 a jail term of 30 to 37 months and a maximum fine of \$1 million.

22
23 **1. Aggravating Role in Offense:** Because the defendant
24 served as a manager or supervisor with respect to the criminal
25 activity charged, pursuant to § 3B1.1(b), the defendant's offense
26 level is increased by 3 levels.

27 **2. Total Offense Level:** Pursuant to the foregoing
28 stipulations, defendant's total offense level is 22.

1 3. **Acceptance of Responsibility:** Pursuant to § 3E1.1
2 and as described in more detail in paragraph III(B) above, the
3 defendant's total offense level is decreased by three levels
4 because of his acceptance of responsibility. The Adjusted Total
5 Offense Level is therefore 19.
6

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

10 5. **Departures or Other Enhancements or Reductions:**
11 The parties stipulate and agree that they will not seek or argue
12 in support of any other specific offense characteristics, Chapter
13 Three adjustments, departures, or cross-references, other than
14 those contemplated in the foregoing stipulations. Defense
15 counsel may argue for a variance or deviation from the Sentencing
16 Guidelines under 18 U.S.C. § 3553(a). The government reserves
17 its right to oppose such deviation or variance. If either party
18 breaches this provision, the other party shall be relieved of all
19 of its obligations under this Plea and Cooperation Agreement.
20
21

22 **VII.**

23 **WAIVERS**

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

1 necessary; (d) to subpoena witnesses to testify on his behalf;
2 (e) to confront and cross-examine witnesses against him; and
3 (f) not to be compelled to incriminate himself.

4 **B. Waiver of Appeal and Collateral Attack:** The defendant
5 understands that the law gives him a right to appeal his
6 conviction and sentence. He agrees as part of his plea, however,
7 to give up the right to appeal the conviction and the right to
8 appeal any aspect of the sentence imposed in this case so long as
9 his sentence is no longer than the top of the Sentencing
10 Guidelines range determined by the Court, consistent with the
11 stipulations set forth above about the Sentencing Guidelines
12 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
16 his conviction or his sentence. He specifically agrees not to
17 file a motion under 28 U.S.C. § 2255 or § 2241 attacking his
18 conviction or sentence.
19

20 If the defendant ever attempts to vacate his plea, dismiss
21 the underlying charges, or reduce or set aside his sentence on
22 any of the counts to which he is pleading guilty, the government
23 shall have the right to: (1) prosecute the defendant on any of
24 the counts to which he pleaded guilty; (2) reinstate any counts
25 that may be dismissed pursuant to this Plea and Cooperation
26 Agreement; and (3) file any new charges that would otherwise be
27 barred by this Plea and Cooperation Agreement. The decision to
28

1 pursue any or all of these options is solely in the discretion of
2 the United States Attorney's Office and the Department of
3 Justice, Antitrust Division. By signing this Plea and
4 Cooperation Agreement, the defendant agrees to waive any
5 objections, motions, and defenses he might have to the
6 government's decision. In particular, he agrees not to raise any
7 objections based on the passage of time with respect to such
8 counts, including, but not limited to, any statutes of limitation
9 or any objections based on the Speedy Trial Act or the Speedy
10 Trial Clause of the Sixth Amendment.
11

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

19 **VIII.**

20 **ENTIRE PLEA AND COOPERATION AGREEMENT**

21 Other than this Plea and Cooperation Agreement, no
22 agreement, understanding, promise, or condition between the
23 government and the defendant exists, nor will such agreement,
24 understanding, promise, or condition exist unless it is committed
25 to writing and signed by the defendant, counsel for the
26

27 //

28 //

1 //

2 defendant, and counsel for the government.

3 IX.

4 APPROVALS AND SIGNATURES

5

6 A. Defense Counsel: I have read this Plea and Cooperation

7 Agreement and have discussed it fully with my client. The Plea

8 and Cooperation Agreement accurately and completely sets forth

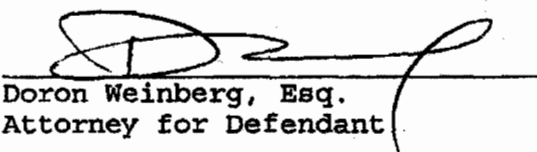
9 the entirety of the agreement. I concur in my client's decision

10 to plead guilty as set forth in this Plea and Cooperation

11 Agreement.

12

13 DATED: 1/26/11

14 
Doron Weinberg, Esq.
Attorney for Defendant

15

16 B. Defendant: I have read this Plea and Cooperation

17 Agreement and carefully reviewed every part of it with my

18 attorney. I understand it, and I voluntarily agree to it.

19 Further, I have consulted with my attorney and fully understand

20 my rights with respect to the provisions of the Sentencing

21 Guidelines that may apply to my case. No other promises or

22 inducements have been made to me, other than those contained in

23 this Plea and Cooperation Agreement. In addition, no one has

24 threatened or forced me in any way to enter into this Plea and

25 Cooperation Agreement. Finally, I am satisfied with the

26

27 //

28 //

1 //

2
3 representation of my attorney in this case.
4

5 DATED: 1/22/11


6 RICHARD W. NORTH CUTT, Defendant
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: _____

BENJAMIN B. WAGNER
14 United States Attorney
15

16 By: _____

17 RUSSELL L. CARLBERG
18 Assistant U.S. Attorney
19

20 CHRISTINE A. VARNEY
21 Assistant Attorney General
22

23 By: _____

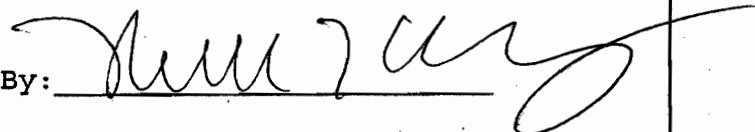
24 BARBARA J. NELSON
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26 ALBERT B. SAMBAT
27 Trial Attorneys
28 U.S. Department of Justice
Antitrust Division

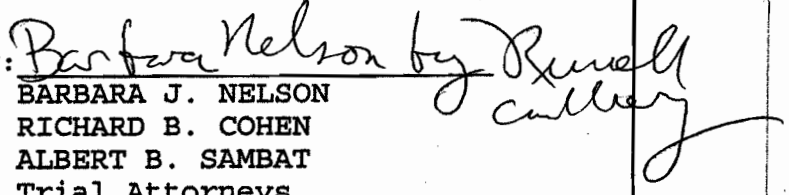
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representation of my attorney in this case.

DATED: _____
RICHARD W. NORTHCUTT, Defendant

C. Attorneys for the Government: The undersigned accept and agree to this Plea and Cooperation Agreement on behalf of the government.

DATED: Jan 28, 2011
BENJAMIN B. WAGNER
United States Attorney

By: 
RUSSELL L. CARLBERG
Assistant U.S. Attorney

CHRISTINE A. VARNEY
Assistant Attorney General
By: 
BARBARA J. NELSON
RICHARD B. COHEN
ALBERT B. SAMBAT
Trial Attorneys
U.S. Department of Justice
Antitrust Division

1 **EXHIBIT "A"**
2 **Factual Basis for Plea**

3 **Bid Rigging**

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

6 Beginning in or about September 2008 and continuing until in
7 or about October 2009 (relevant period), defendant participated
8 in a conspiracy to rig bids at public real estate auctions held
9 in San Joaquin County, California, located in the Eastern
10 District of California. The primary purpose of this conspiracy
11 was to suppress and restrain competition and obtain selected real
12 estate offered at San Joaquin County public auctions at non-
13 competitive prices. During the relevant period, defendant and
14 his co-conspirators reached agreements not to bid against one
15 another and to allocate properties among themselves. To carry
16 out their agreements, defendant and his co-conspirators refrained
17 from bidding or refrained from bidding up the price for auctioned
18 properties. In many instances, defendant and his co-conspirators
19 held private auctions, open only to members of the conspiracy, to
20 rebid the property. Defendant and his co-conspirators awarded
21 the property to the conspirators who submitted the highest bid at
22 the private auctions. Defendant and his co-conspirators
23 distributed the proceeds of the private auctions as payoffs to
24 the other, unsuccessful bidders in the private auction, based
25 upon a predetermined formula agreed upon by the members of the
26 conspiracy, for refraining from bidding on the property at the
27 public auction.

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

35 **Conspiracy to Commit Mail Fraud**

36 Beginning in or about September 2008 and continuing until in
37 or about October 2009 (relevant period), defendant knowingly
38 devised or participated in a conspiracy to defraud or to obtain
39 money or property by means of materially false pretenses,
40 representations, or promises from the mortgage holders and owners
41 of properties that were being sold at public real estate
42 foreclosure auctions in the Eastern District of California. That
43 conspiracy to defraud consisted of suppressing competition at the

1 public auction of properties by agreeing not to bid against one
2 another at the public auction, by acquiring the property at a
3 lower price than would have resulted from a fully competitive
4 auction, and by holding a second, private auction and dividing
5 the profits of the scheme (the difference between the public and
6 private auction prices) among themselves. In other words, the
7 participants intentionally manipulated the sales price of
8 properties, causing false, artificially low sales prices to be
9 reported and paid to victims of the scheme.

10 The defendant and others, for the purpose of executing the
11 conspiracy described above and attempting to do so, knowingly
12 used and caused to be used the United States mails or private or
13 commercial carrier. For example, trustees and government
14 agencies used the United States mail to transmit grant deeds and
15 other title documents to participants in the conspiracy to
16 defraud. These mailings were foreseeable to defendant in the
17 ordinary course of business.