

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.

17
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 \$31,000. 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
26 Plea and Cooperation Agreement and as determined by the United
27 States Probation Office. The government's recommendation with
28

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

3 **III.**

4 **THE GOVERNMENT'S OBLIGATIONS**

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

10 **B. Acceptance of Responsibility:** The government agrees that
11 a two-level reduction in defendant's offense level for his full
12 and clear demonstration of acceptance of responsibility is
13 appropriate under U.S.S.G. § 3E1.1, will not oppose such a
14 reduction, and will so move under § 3E1.1, so long as the
15 defendant pleads guilty, meets with and assists the probation
16 officer in the preparation of the presentence report, is truthful
17 and candid with the probation officer and the Court, and does not
18 otherwise engage in conduct that constitutes obstruction of
19 justice within the meaning of U.S.S.G. § 3C1.1, either in the
20 preparation of the pre-sentence report or during the sentencing
21 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 **D. Fine:** The government agrees to recommend that the
14 defendant be ordered to pay a fine of \$20,000 pursuant to
15 U.S.S.G. § 2R1.1(c)(1) or other amount as recommended by the
16 United States Probation Office.
17

18 **IV.**

19 **ELEMENTS OF THE OFFENSE**

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

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

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

12 Fourth, that for the purpose of carrying out the scheme or
13 attempting to do so, the defendant knowingly used and caused to
14 be used the United States mails or private or commercial carrier
15 in the manner charged.
16

17 V.

18 **MAXIMUM SENTENCE**

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

1 fine of \$1,000,000; a five-year period of supervised release; and
2 a special assessment of \$100.

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

9 **VI.**

10 **SENTENCING DETERMINATION**

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

1 understands that the Court, after consultation and consideration
2 of the Sentencing Guidelines, must impose a sentence that is
3 reasonable in light of the factors set forth in 18 U.S.C.
4 § 3553(a).

5 **B. Stipulations Affecting Guidelines Calculations:** The
6 government and the defendant agree that there is no material
7 dispute as to the following Sentencing Guidelines variables and
8 therefore stipulate and agree to the following:
9

10 For Count One:

11	§ 2R1.1(a)	Base Offense Level	12
12	(b) (1)	Bid Rigging	+1
13	(b) (2) (A)	Volume of Commerce > \$1 million	+2
14		Total	15
15	(c) (1)	Fine 1 - 5% of \$7.68 million	

16 For Count Two:

17	§2 B1.1(a) (1)	Base Offense Level	7
18	(b) (1) (D)	Loss > \$30,000	+6
19		Total	13

20 The Guidelines calculation results in an offense level of 15, for
21 a jail term of 18 to 24 months and a fine between \$76,800 and
22 \$384,000.
23

24 **1. Acceptance of Responsibility:** Pursuant to § 3E1.1
25 and as described in more detail in paragraph III. B. above, the
26 defendant's total offense level is decreased by two levels
27 because of his acceptance of responsibility. The Adjusted Total
28

1 Offense Level is therefore 13.

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

5 **3. Departures or Other Enhancements or Reductions:**
6
7 The parties stipulate and agree that they will not seek or argue
8 in support of any other specific offense characteristics, Chapter
9 Three adjustments, departures, or cross-references, other than
10 those contemplated in the foregoing stipulations. Defense
11 counsel may argue for a variance or deviation from the Sentencing
12 Guidelines under 18 U.S.C. § 3553(a). The government reserves
13 its right to oppose such deviation or variance. If either party
14 breaches this provision, the other party shall be relieved of all
15 of its obligations under this Plea and Cooperation Agreement.
16

17 **VII.**

18 **WAIVERS**

19 **A. Waiver of Constitutional Rights:** The defendant
20 understands that by pleading guilty he is waiving the following
21 constitutional rights: (a) to plead not guilty and to persist in
22 that plea if already made; (b) to be tried by a jury; (c) to be
23 assisted at trial by an attorney, who would be appointed if
24 necessary; (d) to subpoena witnesses to testify on his behalf;
25 (e) to confront and cross-examine witnesses against him; and
26 (f) not to be compelled to incriminate himself.
27

28 **B. Waiver of Appeal and Collateral Attack:** The defendant

1 understands that the law gives him a right to appeal his
2 conviction and sentence. He agrees as part of his plea, however,
3 to give up the right to appeal the conviction and the right to
4 appeal any aspect of the sentence imposed in this case so long as
5 his sentence is no longer than the top of the Sentencing
6 Guidelines range determined by the Court, consistent with the
7 stipulations set forth above about the Sentencing Guidelines
8 variables.
9

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

16 If the defendant ever attempts to vacate his plea, dismiss
17 the underlying charges, or reduce or set aside his sentence on
18 any of the counts to which he is pleading guilty, the government
19 shall have the right to: (1) prosecute the defendant on any of
20 the counts to which he pleaded guilty; (2) reinstate any counts
21 that may be dismissed pursuant to this Plea and Cooperation
22 Agreement; and (3) file any new charges that would otherwise be
23 barred by this Plea and Cooperation Agreement. The decision to
24 pursue any or all of these options is solely in the discretion of
25 the United States Attorney's Office and the Department of
26 Justice, Antitrust Division. By signing this Plea and
27 Cooperation Agreement, the defendant agrees to waive any
28

1 objections, motions, and defenses he might have to the
2 government's decision. In particular, he agrees not to raise any
3 objections based on the passage of time with respect to such
4 counts, including, but not limited to, any statutes of limitation
5 or any objections based on the Speedy Trial Act or the Speedy
6 Trial Clause of the Sixth Amendment.
7

8 **C. Waiver of Attorneys' Fees and Costs:** The defendant
9 agrees to waive all rights under the "Hyde Amendment," Section
10 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or
11 other litigation expenses in connection with the investigation
12 and prosecution of all charges in the above-captioned matter and
13 of any related allegations.
14

15 **VIII.**

16 **ENTIRE PLEA AND COOPERATION AGREEMENT**

17 Other than this Plea and Cooperation Agreement, no
18 agreement, understanding, promise, or condition between the
19 government and the defendant exists, nor will such agreement,
20 understanding, promise, or condition exist unless it is committed
21

22 //
23 //
24 //
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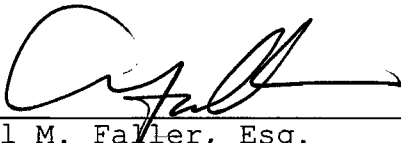
1 to writing and signed by the defendant, counsel for the
2 defendant, and counsel for the government.

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: 8/12/10

14 
15 _____
16 Carl M. Fayler, Esq.
17 Attorney for Defendant

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

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1 Cooperation Agreement. Finally, I am satisfied with the
2 representation of my attorney in this case.

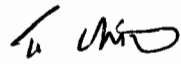
3
4 DATED: 8-12-2011


5
6 WALTER DANIEL OLMSTEAD

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


12
13 DATED: 8-12-2011

BENJAMIN B. WAGNER
United States Attorney

14
15 
16 By: For Russell Carlberg

RUSSELL L. CARLBERG
Assistant U.S. Attorney

17
18
19
20 CHRISTINE A. VARNEY
Assistant Attorney General

21
22 By: 
23

ANNA TRYON PLETCHER
24 TAI S. MILDER
25 RICHARD B. COHEN
26 Trial Attorneys
27 U.S. Department of Justice
28 Antitrust Division

1 **EXHIBIT "A"**

2 **Factual Basis for Plea**

3 **Bid Rigging**

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

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

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

24 **Conspiracy to Commit Mail Fraud**

25 Beginning in or about November 2008 and continuing until in
26 or about July 2009 (relevant period), defendant knowingly devised
27 or participated in a conspiracy to defraud or to obtain money or
28 property by means of materially false pretenses, representations,
or promises from the mortgage holders and owners of properties
that were being sold at public real estate foreclosure auctions
in the Eastern District of California. That conspiracy to

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

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