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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

FILED
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DEBORAH W. WIERKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHO

11
12 UNITED STATES OF AMERICA

CR. 15 201

13
14 v.

INFORMATION
VIOLATION:
Title 15, United States Code,
Section 1 (Price Fixing)

15
16 DAVID TOPKINS,

17 Defendant.

18
19 The United States of America, acting through its attorneys, charges:

20 DAVID TOPKINS,

21 the defendant herein, as follows:

22 I.

23 DEFENDANT AND CO-CONSPIRATORS

24 1. During the time period covered by this Information, TOPKINS was a resident
25 of California and a citizen of the United States. From at least as early as March 2012 until at
26 least as late as January 2014, TOPKINS was employed by Company A as a Director in its
27 Trend Division. During the time period covered by this Information, Company A sold
28 posters, prints, and framed art in the United States and elsewhere. Posters are pieces of paper

1 depicting printed images that are designed to be hung, mounted on, or affixed to a wall or
2 other vertical surface. Company A sells posters directly to customers in the United States
3 through various online marketplaces, including Amazon Marketplace, Amazon.com, Inc.'s
4 ("Amazon") website for third-party sellers.

5 2. Various corporations and individuals, not made defendants in this Information,
6 participated as co-conspirators in the offense charged in this Information and performed acts
7 and made statements in furtherance of it.

8 3. Whenever in this Information reference is made to any act, deed, or transaction
9 of any corporation, the allegation means that the corporation engaged in the act, deed, or
10 transaction by or through its officers, directors, employees, agents, or other representatives
11 while they were actively engaged in the management, direction, control, or transaction of its
12 business or affairs.

13 II.

14 BACKGROUND

15 4. Amazon Marketplace operates as an auction model. Sellers create accounts
16 with Amazon through which they can offer various products. Though sales are made through
17 Amazon Marketplace, sellers control all pricing and shipping decisions on the products they
18 offer.

19 5. Company A and other poster-selling firms used commercially available
20 algorithm-based pricing software to set the prices of posters sold on Amazon Marketplace.
21 This software operates by collecting competitor pricing information for a specific product sold
22 on Amazon Marketplace and applying pricing rules set by the seller.

23 III.

24 DESCRIPTION OF THE OFFENSE

25 6. Beginning as early as September 2013 and continuing until in or about January
26 2014, the defendant and his co-conspirators entered into and engaged in a combination and
27 conspiracy to fix the prices of certain posters sold in the United States on Amazon
28 Marketplace ("agreed-upon posters"). The combination and conspiracy engaged in by the

1 defendant and co-conspirators was an unreasonable restraint of interstate commerce in
2 violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3 7. The charged combination and conspiracy consisted of a continuing agreement,
4 understanding, and concert of action among the defendant and co-conspirators, the substantial
5 terms of which were to fix, increase, maintain, and stabilize prices of the agreed-upon posters.

6 IV.

7 MEANS AND METHODS

8 8. For the purpose of forming and carrying out the charged combination and
9 conspiracy, the defendant and his co-conspirators did those things that they combined and
10 conspired to do, including, among other things:

11 a. TOPKINS and his co-conspirators participated in conversations and
12 communications with representatives of other poster-selling firms to discuss the prices of the
13 agreed-upon posters.

14 b. During those conversations and communications, TOPKINS and his co-
15 conspirators agreed to fix, increase, maintain, and stabilize prices of the agreed-upon posters.

16 c. In order to implement this agreement, TOPKINS and his co-conspirators
17 agreed to adopt specific pricing algorithms for the agreed-upon posters with the goal of
18 coordinating changes to their respective prices.

19 d. In furtherance of the conspiracy, TOPKINS wrote computer code that
20 instructed Company A's algorithm-based software to set prices of the agreed-upon posters in
21 conformity with this agreement.

22 e. For the purpose of reaching agreements on prices, enforcing adherence to
23 the agreements reached, and monitoring the effectiveness of the pricing algorithms, TOPKINS
24 and his co-conspirators collected, exchanged, monitored, and discussed information on the prices
25 and sales of the agreed-upon posters.

26 f. In accordance with the agreements reached, TOPKINS and his co-
27 conspirators sold, distributed, and accepted payment for the agreed-upon posters at collusive,
28 non-competitive prices on Amazon Marketplace.

V.

TRADE AND COMMERCE

1
2
3 9. During the period covered by this Information, TOPKINS, Company A, and its
4 co-conspirators sold and shipped posters in a continuous and uninterrupted flow of interstate
5 trade and commerce to customers located in states outside the place of origin of the
6 shipments.

7 10. During the period covered by this Information, the business activities of the
8 defendants and co-conspirators in connection with the sale of the agreed-upon posters were
9 within the flow of, and substantially affected, interstate commerce.

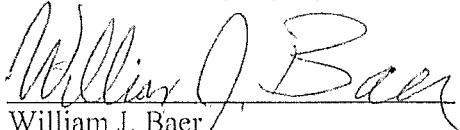
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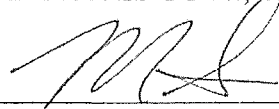
VI.


JURISDICTION AND VENUE

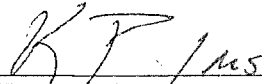
11. The combination and conspiracy charged in this Information was carried out, in part, in the Northern District of California, within the five years preceding the return of this Information.

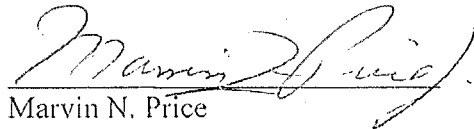
ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

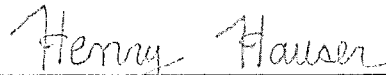

William J. Baer
Assistant Attorney General

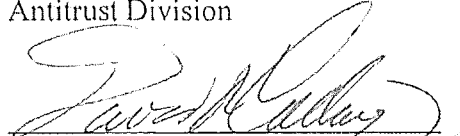

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