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

18 UNITED STATES OF AMERICA

) No. CR 12-0300 CRB

19 v.

) PLEA AGREEMENT

20 MATTHEW WORTHING,

21 Defendant.

22 The United States of America and MATTHEW WORTHING ("defendant") hereby enter
23 into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal
24 Procedure ("Fed. R. Crim. P."):

25 RIGHTS OF DEFENDANT

- 26 1. The defendant understands his rights:
27 (a) to be represented by an attorney;
28 (b) to be charged by Indictment;

1 (c) to plead not guilty to any criminal charge brought against him;

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

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

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

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

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

10 AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

11 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g)
12 above. The defendant also knowingly and voluntarily waives the right to file any appeal, any
13 collateral attack, or any other writ or motion, including but not limited to an appeal under 18
14 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed
15 by the Court if that sentence is consistent with or below the Sentencing Guidelines range
16 stipulated by the parties in Paragraph 9 of this Plea Agreement, regardless of how the sentence is
17 determined by the Court. This agreement does not affect the rights or obligations of the United
18 States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, shall act as a bar
19 to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral
20 attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.
21 Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment at arraignment and will
22 plead guilty to a four-count Information to be filed in the United States District Court for the
23 Northern District of California. Count One of the Information charges the defendant with
24 participating in a conspiracy to suppress and restrain competition by rigging bids to obtain
25 selected properties offered at public real estate foreclosure auctions in San Mateo County, in the
26 Northern District of California (“the San Mateo County selected properties”), in unreasonable
27 restraint of interstate trade and commerce, in violation of the Sherman Act, 15 U.S.C. § 1,
28 beginning as early as September 2010 and continuing until in or about January 2011 (“relevant

1 period”). Count Two of the Information charges the defendant with conspiracy to commit mail
2 fraud in violation of 18 U.S.C. § 1349, in San Mateo County, California, during the relevant
3 period. Count Three of the Information charges the defendant with participating in a conspiracy
4 to suppress and restrain competition by rigging bids to obtain selected properties offered at
5 public real estate foreclosure auctions in San Francisco County, in the Northern District of
6 California (“the San Francisco County selected properties”), in unreasonable restraint of
7 interstate trade and commerce, in violation of the Sherman Act, 15 U.S.C. § 1, during September
8 2010 (“second relevant period”). Count Four of the Information charges the defendant with
9 conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349, in San Francisco, California,
10 during the second relevant period.

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

16 FACTUAL BASIS FOR CHARGED OFFENSES

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

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

20 During the relevant period, the defendant participated in a conspiracy to rig bids to obtain
21 the San Mateo County selected properties. The primary purpose of this conspiracy was to
22 suppress and restrain competition to purchase the San Mateo County selected properties at
23 non-competitive prices. To carry out their conspiracy, the defendant and his co-conspirators
24 agreed not to compete to purchase the San Mateo County selected properties, designated which
25 conspirator would win the San Mateo County selected properties at the public auctions for the
26 group of conspirators, and refrained from or stopped bidding on the San Mateo County selected
27 properties at the public auctions.

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

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

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

10 During the relevant period, the defendant and his co-conspirators willfully and knowingly
11 agreed to devise and intended to devise and to participate in a scheme and artifice to defraud
12 mortgage holders, other holders of debt secured by the selected properties, and in some cases, the
13 defaulting homeowners (collectively, "beneficiaries"), and to obtain money and property from
14 them by means of materially false and fraudulent pretenses, representations, and promises. The
15 objects of the conspiracy were to fraudulently acquire title to the San Mateo County selected
16 properties, to make and receive payoffs, and to divert money to conspirators that would have
17 gone to the beneficiaries. Among other things, the defendant and his co-conspirators executed a
18 deceptive scheme by negotiating payoffs with one or more conspirators not to compete; in some
19 instances, falsely participating in foreclosure auctions to create the appearance that they were
20 bidding competitively when, in fact, they were not; purchasing the selected properties at public
21 auctions at suppressed prices; paying conspirators monies that otherwise would have gone to the
22 beneficiaries; taking steps to conceal the fact that monies were diverted from the beneficiaries to
23 the conspirators; making and causing to be made materially false and misleading statements on
24 records of public auctions that trustees relied upon to distribute proceeds from the public auction
25 to the beneficiaries and convey title to properties sold at the public auction; and causing the
26 suppressed purchase price to be reported and paid to the beneficiaries.

27 The defendant and others, for the purpose of executing the conspiracy described above
28 and attempting to do so, knowingly used and caused to be used the United States Postal Service

1 and private or commercial interstate carriers. For example, trustees used the United States mail
2 and private or commercial interstate carriers to transmit Trustee's Deeds Upon Sale and other
3 title documents to participants in the conspiracy. These mailings were foreseeable to the
4 defendant in the ordinary course of business.

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

7 (c) As to Count Three of the Information:

8 During the second relevant period, the defendant participated in a conspiracy to rig bids
9 to obtain the San Francisco County selected properties. The primary purpose of the conspiracy
10 was to suppress and restrain competition to purchase San Francisco County selected properties at
11 non-competitive prices. To carry out their conspiracy, the defendant and his co-conspirators
12 agreed not to compete to purchase a San Francisco County property, designated which
13 conspirator would win the San Francisco County property at the public auction for the group of
14 conspirators, and refrained from or stopped bidding on the San Francisco County property at the
15 public auction. During the second relevant period, the business activities of the defendant and his
16 co-conspirators were within the flow of, and substantially affected, interstate trade and
17 commerce. For example, mortgage holders located in states other than California received
18 proceeds from the public real estate foreclosure auctions that were subject to the bid-rigging
19 conspiracy.

20 During the second relevant period, the conspiratorial activities described above took
21 place in the Northern District of California, and the real estate that was the subject of this
22 conspiracy was located in this District.

23 (d) As to Count Four of the Information:

24 During the second relevant period, the defendant and his co-conspirators willfully and
25 knowingly agreed to devise and intended to devise and to participate in a scheme and artifice to
26 defraud beneficiaries, and to obtain money and property from them by means of materially false
27 and fraudulent pretenses, representations, and promises. The objects of the conspiracy were to
28 fraudulently acquire title to selected San Francisco County properties, to make and receive

1 payoffs, and to divert money to conspirators that would have gone to the beneficiaries. Among
2 other things, the defendant and his co-conspirators executed a deceptive scheme by negotiating
3 payoffs with one or more conspirators not to compete; purchasing a property at a public auction
4 at a suppressed price; paying conspirators monies that otherwise would have gone to the
5 beneficiaries; taking steps to conceal the fact that monies were diverted from the beneficiaries to
6 the conspirators; making and causing to be made materially false and misleading statements on
7 records of the public auction that trustees relied upon to distribute proceeds from the public
8 auction to the beneficiaries and convey title to the property sold at the public auction; and
9 causing the suppressed purchase price to be reported and paid to the beneficiaries.

10 The defendant and others, for the purpose of executing the conspiracy described above
11 and attempting to do so, knowingly used and caused to be used the United States Postal Service
12 and private or commercial interstate carriers. For example, trustees used the United States mail
13 and private or commercial interstate carriers to transmit Trustee's Deeds Upon Sale and other
14 title documents to participants in the conspiracy. These mailings were foreseeable to the
15 defendant in the ordinary course of business.

16 During the second relevant period, the real estate that was the subject of this conspiracy
17 was located in the Northern District of California.

18 POSSIBLE MAXIMUM SENTENCE

19 5. The defendant understands that the statutory maximum penalty that may be
20 imposed against him upon conviction for a violation of Count One or Count Three, 15 U.S.C.
21 § 1, is:

- 22 (a) a term of imprisonment for ten years (15 U.S.C. § 1);
23 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the
24 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary
25 loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b)
26 and (d)); and
27 (c) a term of supervised release of not more than three years following any
28 term of imprisonment. If the defendant violates any condition of supervised release, the

1 defendant could be required to serve up to an additional two years in prison (18 U.S.C.
2 § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines
3 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

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

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

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

9 (c) a term of supervised release of not more than five 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 three years in prison (18 U.S.C.
12 § 3559(a)(2); 18 U.S.C. § 3583(b)(1) and (e)(3); and U.S.S.G. § 5D1.2(a)(1)).

13 7. In addition, the defendant understands that:

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

16 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the
17 defendant to pay a \$100 special assessment upon conviction for each charged crime, totaling
18 \$400.

19 SENTENCING GUIDELINES

20 8. The defendant understands that the Sentencing Guidelines are advisory, not
21 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,
22 along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing
23 sentence. The defendant understands that the Guidelines determinations will be made by the
24 Court by a preponderance-of-the-evidence standard. The defendant understands that although
25 the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its
26 sentence must be reasonable, based upon consideration of all relevant sentencing factors set forth
27 in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-
28 incriminating information that the defendant provides to the United States pursuant to this Plea

1 Agreement will not be used to increase the volume of affected commerce or loss attributable to
 2 the defendant or in determining the defendant's applicable Guidelines range, except to the extent
 3 provided in U.S.S.G. § 1B1.8(b).

4 SENTENCING AGREEMENT

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

7 (a) Counts One and Three (15 U.S.C. § 1):

8 Counts One and Three are grouped under U.S.S.G § 3D1.2(d) by
 9 aggregating the volume of commerce attributable to the defendant in both
 10 counties, for a total of \$917,987

- 11 i. Base Offense Level, U.S.S.G. § 2R1.1(a): 12
- 12 ii. Conduct involved agreement to submit non-competitive
 13 bids, U.S.S.G. § 2R1.1(b)(1): +1
- 14 iii. Volume of Commerce, U.S.S.G. § 2R1.1(b)(2): +0
- 15 Total: 13

16 Fine calculated as one to five percent of the volume
 17 of commerce, but not less than \$20,000,
 U.S.S.G. § 2R1.1(c)(1): \$20,000 - \$45,899

18 (b) Counts Two and Four (18 U.S.C. § 1349):

19 Counts 2 and 4 are grouped under U.S.S.G § 3D1.2(d) by aggregating the
 20 fraud loss for the selected properties from both counties, for a total of \$96,500.

- 21 i. Base Offense Level, U.S.S.G. § 2X1.1(a)
 22 (incorporates base offense level from Guideline
 23 for substantive offense, U.S.S.G. § 2B1.1(a)(1)) 7
- 24 ii. Adjustments, U.S.S.G. § 2X1.1(a)
 25 (incorporates adjustments from Guideline for
 26 substantive offense)
 - 27 a. Loss > \$70,000, U.S.S.G. § 2B1.1(b)(1)(E): +8
 - 28 Total: 15
 - Fine, U.S.S.G. § 5E1.2(c)(3): \$4,000 to \$40,000

1 Counts One and Three group with Counts Two and Four under U.S.S.G. § 3D1.2(b). According
2 to U.S.S.G. § 3D1.3(a), the combined offense level is the highest offense level between these
3 two subgroups. Therefore, the offense level to be applied is the offense level for the subgroup
4 consisting of Counts Two and Four, which results in a combined offense level of 15.

5 10. The United States agrees that it will make a motion, pursuant to U.S.S.G. § 3E1.1,
6 for a downward adjustment of two levels for acceptance of responsibility due to the defendant's
7 timely notification of his intention to enter a guilty plea. Therefore, the ultimate Guidelines
8 calculations result in an adjusted offense level of 13, for a jail term of 12 to 18 months and a fine
9 of \$3,000 to \$30,000.

10 11. The defendant understands that the Court will order him to pay a special
11 assessment of \$100 per count (\$400 total) pursuant to 18 U.S.C. § 3013(a)(2)(A), in addition to
12 any fine imposed. The parties agree that there exists no aggravating or mitigating circumstance
13 of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing
14 Commission in formulating the Sentencing Guidelines justifying a departure pursuant to
15 U.S.S.G. § 5K2.0.

16 12. The Mandatory Victim Restitution Act requires the Court to order restitution to
17 the victims of certain offenses. The government and the defendant agree to recommend that the
18 Court order the defendant to pay restitution in the amount of \$15,000 pursuant to U.S.S.G.
19 § 5E1.1(a). The defendant understands that this Plea Agreement is voidable by the government
20 if he fails to pay the restitution as ordered by the Court. The defendant further agrees that he will
21 not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy
22 proceeding.

23 13. The United States and the defendant are not aware of any information that would
24 affect the defendant's Criminal History Category. If no other information were discovered, the
25 defendant's Criminal History Category would be I. The parties understand that the defendant's
26 Criminal History Category is determined by the Court.

27 14. The defendant understands that the sentence to be imposed on him is within the
28 sole discretion of the sentencing judge. The United States cannot and does not make any

1 promises or representations as to what sentence the defendant will receive. However, the United
2 States will inform the Probation Office and the Court of (a) this agreement; (b) the nature and
3 extent of the defendant's activities in this case and all other activities of the defendant that the
4 United States deems relevant to sentencing; and (c) the nature and extent of the defendant's
5 cooperation with the United States. In so doing, the United States may use any information it
6 deems relevant, including information provided by the defendant both prior and subsequent to
7 the signing of this agreement. The United States reserves the right to make any statement to the
8 Court or the Probation Office concerning the nature of the criminal violations charged in the
9 attached Information, the participation of the defendant therein, and any other facts or
10 circumstances that it deems relevant. The United States also reserves the right to comment on or
11 to correct any representation made by or on behalf of the defendant and to supply any other
12 information that the Court may require.

13 15. If the United States determines that the defendant has provided substantial
14 assistance in any Federal Proceeding, as defined in Paragraph 18 of this Plea Agreement, and has
15 otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion,
16 pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to
17 that determination and requesting the Court to sentence the defendant in light of the factors set
18 forth in U.S.S.G. § 5K1.1(a)(1)-(5). The defendant acknowledges that the decision whether he
19 has provided substantial assistance in any Federal Proceeding and has otherwise complied with
20 the terms of this Plea Agreement is within the sole discretion of the United States. It is
21 understood that, should the United States determine that the defendant has not provided
22 substantial assistance in any Federal Proceeding, or should the United States determine that the
23 defendant has violated any provision of this Plea Agreement, such a determination will release
24 the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not
25 entitle the defendant to withdraw his guilty plea once it has been entered. The defendant further
26 understands that, whether or not the United States files a motion pursuant to U.S.S.G. § 5K1.1,
27 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

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1 withholding any information, subject to the penalties of making false statements (18 U.S.C.
2 § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

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

6 (e) when called upon to do so by the United States in connection with any
7 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully,
8 and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or
9 declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C.
10 §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

11 GOVERNMENT'S AGREEMENT

12 19. Subject to the full, truthful, and continuing cooperation of the defendant described
13 in Paragraph 18 of this Plea Agreement, and upon the Court's acceptance of the guilty plea
14 called for by this Plea Agreement and the imposition of sentence, the United States will not bring
15 further criminal charges against the defendant for any act or offense committed before the date of
16 this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy or in violation
17 of any related criminal law involving the purchase of properties at public real estate foreclosure
18 auctions in the Northern District of California ("Relevant Offenses"). The non-prosecution
19 terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal
20 tax or securities laws, or to any crime of violence.

21 20. The defendant understands that he may be subject to administrative action by
22 federal or state agencies other than the United States Department of Justice, Antitrust Division,
23 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
24 no way controls whatever action, if any, other agencies may take. However, the United States
25 agrees that, if requested, it will advise the appropriate officials of any governmental agency
26 considering such administrative action of the fact, manner, and extent of the cooperation of the
27 defendant as a matter for that agency to consider before determining what administrative action,
28 if any, to take.

1 Offenses, the statute of limitations period for such offense shall be tolled for the period between
2 the date of the signing of this Plea Agreement and six months after the date the United States
3 gave notice of 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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1 27. A facsimile signature shall be deemed an original signature for the purpose of
2 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of
3 executing this Plea Agreement.

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6 MATTHEW WORTHING
7 Defendant

8 Dated: 6/20/12

9 

10 JOHN L. WILLIAMS
11 Counsel for Defendant Matthew Worthing
12 Law Offices of John L. Williams
13 111 North Market St., Suite 300
San Jose, CA 95113

14 Dated: 6-20-12



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

Dated: 6/20/12

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