

FILED

JUN 10 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 UNITED STATES OF AMERICA

17 v.

18 WAYNE LIPPMAN,
19 Defendant.

) No. CR 15-00245 PJH

) PLEA AGREEMENT

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

23 RIGHTS OF DEFENDANT

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

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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 8 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 will 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 selected properties offered at public real estate foreclosure auctions in Alameda County
25 in the Northern District of California (“the Alameda County selected properties”), in
26 unreasonable restraint of interstate trade and commerce, in violation of the Sherman Act, 15
27 U.S.C. § 1, beginning as early as March 2009 and continuing until in or about January 2011
28 (“relevant period”). Count Two of the Information charges the defendant with participating in a

1 conspiracy to suppress and restrain competition by rigging bids to obtain selected properties
2 offered at public real estate foreclosure auctions in Contra Costa County in the Northern District
3 of California (“the Contra Costa County selected properties”), in unreasonable restraint of
4 interstate trade and commerce, in violation of the Sherman Act, 15 U.S.C. § 1, beginning as early
5 as August 2008 and continuing until in or about January 2011 (“second relevant period”).

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

11 FACTUAL BASIS FOR CHARGED OFFENSES

12 4. The defendant agrees that he is guilty of the offenses to which he will plead guilty
13 and agrees that the following facts are true:

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

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

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

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

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

5 During the second relevant period, the defendant participated in a conspiracy to rig bids
6 to obtain the Contra Costa County selected properties. The primary purpose of this conspiracy
7 was to suppress and restrain competition to purchase the Contra Costa County selected properties
8 at non-competitive prices. To carry out their conspiracy, the defendant and his co-conspirators
9 agreed not to compete to purchase the Contra Costa County selected properties, designated
10 which conspirator would win the Contra Costa County selected properties at the public auctions
11 for the group of conspirators, and refrained from or stopped bidding on the Contra Costa County
12 selected properties at the public auctions.

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

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

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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 or Count Two, 15 U.S.C. § 1,
4 is:

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

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

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

15 6. In addition, the defendant understands that:

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

18 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the
19 defendant to pay a \$100 special assessment upon conviction for each charged crime, totaling
20 \$200.

SENTENCING GUIDELINES

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

1 in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-
2 incriminating information that the defendant provides to the United States pursuant to this Plea
3 Agreement will not be used to increase the volume of affected commerce or loss attributable to
4 the defendant or in determining the defendant’s applicable Guidelines range, except to the extent
5 provided in U.S.S.G. §1B1.8(b).

6 SENTENCING AGREEMENT

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

9 Counts One and Two (15 U.S.C. § 1):

10 Counts One and Two are grouped under U.S.S.G §3D1.2(d) by
11 aggregating the volume of commerce attributable to the defendant in both
12 counties, for a total of \$18,892,226.38.

13 i. Base Offense Level, U.S.S.G. §2R1.1(a): 12

14 ii. Specific Offense Characteristics:

15 Conduct involved agreement to submit
16 non-competitive bids, U.S.S.G. §2R1.1(b)(1): +1

17 Volume of Commerce, U.S.S.G. §2R1.1(b)(2)(B): +4

18 iii. The defendant understands and agrees that the government may
19 argue (and the defendant may oppose) that the following Specific
20 Offense Characteristic applies:

21 Upward adjustment for aggravating role in the
22 offense, U.S.S.G. §3B1.1(b): [+3]

23 Total: 17 to 20

24 Fine calculated as one to five percent of the volume
25 of commerce, but not less than \$20,000,
26 U.S.S.G. §2R1.1(c)(1): \$188,922 to \$944,611

27 9. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1,
28 for a downward adjustment of three levels for acceptance of responsibility due to the defendant’s
timely notification of his intention to enter a guilty plea. Therefore, the ultimate Guidelines

1 calculations result in an adjusted offense level of 14 to 17 and a fine of \$188,922 to \$944,611.

2 The United States agrees that it will recommend that the Court impose the minimum fine of
3 \$188,922.

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

10 11. The Mandatory Victim Restitution Act requires the Court to order restitution to
11 the victims of certain offenses. The government and the defendant agree to recommend that the
12 Court order the defendant to pay restitution in the amount of \$123,879.60 pursuant to U.S.S.G.
13 §5E1.1(a). The defendant understands that this Plea Agreement is voidable by the government if
14 he fails to pay the restitution as ordered by the Court. The defendant further agrees that he will
15 not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy
16 proceeding.

17 12. The United States and the defendant are not aware of any information that would
18 affect the defendant's Criminal History Category. If no other information were discovered, the
19 defendant's Criminal History Category would be I. The parties understand that the defendant's
20 Criminal History Category is determined by the Court.

21 13. The defendant understands that the sentence to be imposed on him is within the
22 sole discretion of the sentencing judge. The United States cannot and does not make any
23 promises or representations as to what sentence the defendant will receive. However, the United
24 States will inform the Probation Office and the Court of (a) this Agreement, (b) the nature and
25 extent of the defendant's activities in this case and all other activities of the defendant that the
26 United States deems relevant to sentencing, and (c) the nature and extent of the defendant's
27 cooperation with the United States. In so doing, the United States may use any information it
28 deems relevant, including information provided by the defendant both prior and subsequent to

1 the signing of this Agreement. The United States reserves the right to make any statement to the
2 Court or the Probation Office concerning the nature of the criminal violations charged in the
3 attached Information, the participation of the defendant therein, and any other facts or
4 circumstances that it deems relevant. The United States also reserves the right to comment on or
5 to correct any representation made by or on behalf of the defendant and to supply any other
6 information that the Court may require.

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

23 15. Subject to the ongoing, full, and truthful cooperation of the defendant described in
24 Paragraph 17 of this Plea Agreement, and before sentencing in the case, the United States will
25 fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's
26 cooperation and his commitment to prospective cooperation with the United States' investigation
27 and prosecutions, all material facts relating to the defendant's involvement in the charged
28 offenses, and all other relevant conduct. To enable the Court to have the benefit of all relevant

1 sentencing information, the United States may request, and the defendant will not oppose, that
2 sentencing be postponed until the defendant's cooperation is complete.

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

8 DEFENDANT'S COOPERATION

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

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

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

21 (c) responding fully and truthfully to all inquiries of the United States in
22 connection with any Federal Proceeding, without falsely implicating any person or intentionally
23 withholding any information, subject to the penalties of making false statements (18 U.S.C.
24 § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

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

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1 (e) when called upon to do so by the United States in connection with any
2 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully,
3 and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or
4 declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C.
5 §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

6 GOVERNMENT'S AGREEMENT

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

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

24 REPRESENTATION BY COUNSEL

25 20. The defendant has reviewed all legal and factual aspects of this case with his
26 attorney and is fully satisfied with his attorney's legal representation. The defendant has
27 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory
28 explanations from his attorney concerning each paragraph of this Plea Agreement and

1 alternatives available to the defendant other than entering into this Plea Agreement. After
2 conferring with his attorney and considering all available alternatives, the defendant has made a
3 knowing and voluntary decision to enter into this Plea Agreement.

4 VOLUNTARY PLEA

5 21. The defendant's decision to enter into this Plea Agreement and to tender a plea of
6 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
7 or representations other than the representations contained in this Plea Agreement. The United
8 States has made no promises or representations to the defendant as to whether the Court will
9 accept or reject the recommendations contained within this Plea Agreement.

10 VIOLATION OF PLEA AGREEMENT

11 22. The defendant agrees that, should the United States determine in good faith,
12 during the period that any Federal Proceeding is pending, that the defendant has failed to provide
13 full and truthful cooperation, as described in Paragraph 17 of this Plea Agreement, or has
14 otherwise violated any provision of this Plea Agreement, the United States will notify the
15 defendant or his counsel in writing by personal or overnight delivery or facsimile transmission,
16 and may also notify his counsel by telephone, of its intention to void any of its obligations under
17 this Plea Agreement (except its obligations under this paragraph), and the defendant shall be
18 subject to prosecution for any federal crime of which the United States has knowledge, including
19 but not limited to, the substantive offenses relating to the investigation resulting in this Plea
20 Agreement. The defendant may seek Court review of any determination made by the United
21 States under this paragraph to void any of its obligations under the Plea Agreement. The
22 defendant agrees that, in the event that the United States is released from its obligations under
23 this Plea Agreement and brings criminal charges against the defendant for any Relevant
24 Offenses, the statute of limitations period for such offenses shall be tolled for the period between
25 the date of the signing of this Plea Agreement and six months after the date the United States
26 gave notice of its intent to void its obligations under this Plea Agreement.

27 23. The defendant understands and agrees that in any further prosecution of him
28 resulting from the release of the United States from its obligations under this Plea Agreement

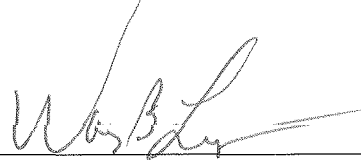
1 based on the defendant's violation of the Plea Agreement, any documents, statements,
2 information, testimony, or evidence provided by him to attorneys or agents of the United States,
3 federal grand juries, or courts, and any leads derived therefrom, may be used against him in any
4 such further prosecution. In addition, the defendant unconditionally waives his right to challenge
5 the use of such evidence in any such further prosecution, notwithstanding the protections of Fed.
6 R. Evid. 410.


7 ENTIRETY OF AGREEMENT


8 24. This Plea Agreement constitutes the entire agreement between the United States
9 and the defendant concerning the disposition of the criminal charges in this case. This Plea
10 Agreement cannot be modified except in writing, signed by the United States and the defendant.

11 25. The undersigned attorneys for the United States have been authorized by the
12 Attorney General of the United States to enter this Plea Agreement on behalf of the United
13 States.

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

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19 _____
20 WAYNE LIPPMAN
21 Defendant

22 
23 _____
24 MICAH L. WYATT, Trial Attorney
25 E. KATE PATCHEN, Assistant Chief
26 MANISH KUMAR, Trial Attorney
27 GABRIEL MARTINEZ, Trial Attorney
28 United States Department of Justice
Antitrust Division

21 Dated: 4/24/15
22
23 
24 _____
25 AARON S. DYER
26 MARC H. AXELBAUM
27 Pillsbury Winthrop Shaw Pittman LLP
28 Counsel for Defendant Wayne Lippman

Dated: 4/24/15

26 Dated: April 24, 2015
27
28