

**FILED**

NOV 16 2016

SAN FRANCISCO  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

MICAH L. RUBBO (CSBN 267465)  
ALEXIS J. LOEB (CSBN 269895)  
U.S. Department of Justice  
Antitrust Division  
450 Golden Gate Avenue  
Box 36046, Room 10-0101  
San Francisco, CA 94102  
Telephone: (415) 934-5300  
micah.rubbo@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA

v.

JOHN MICHAEL GALLOWAY,  
Defendant.

No. CR 14-00607 PJH

**PLEA AGREEMENT**

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

**RIGHTS OF DEFENDANT**

1. The defendant understands his rights:
  - (a) to be represented by an attorney;
  - (b) to be charged by Indictment;
  - (c) to plead not guilty to any criminal charge brought against him;

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PLEA AGREEMENT – JOHN MICHAEL GALLOWAY – 1  
No. CR 14-00607 PJH

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

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

(f) not to be compelled to incriminate himself;

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

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

**AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(c)-(g), above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or § 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the United States Sentencing Guidelines range stipulated by the parties in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court. This Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. Count One of the Indictment in this case charges the defendant with participating in a conspiracy to suppress and restrain competition by rigging bids to obtain selected properties offered at public real estate foreclosure auctions in Contra Costa County in the Northern District of California (“the selected properties”), in unreasonable restraint of interstate trade and commerce, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, beginning as early as June 2008 and continuing until in or about January 2011.

3. The defendant will plead guilty to the criminal charge described in Paragraph 2, above, pursuant to the terms of this Plea Agreement, and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

**FACTUAL BASIS FOR OFFENSE CHARGED**

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

(a) Beginning as early as June 2008 and continuing until in or about January 2011 ("the relevant period"), the defendant participated in a conspiracy to rig bids to obtain the selected properties. The primary purpose of this conspiracy was to suppress and restrain competition in order to purchase the selected properties at noncompetitive prices. To carry out their conspiracy, the defendant and his co-conspirators agreed not to compete to purchase the selected properties, designated which conspirator would win the selected properties at the public auctions, and refrained from or stopped bidding on the selected properties at the public auctions.

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

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

**POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act, 15 U.S.C. § 1, is:

(a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);

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

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1 (c) a term of supervised release of three (3) years following any term of  
2 imprisonment. If the defendant violates any condition of supervised release, the defendant could  
3 be required to serve up to an additional two (2) years in prison (18 U.S.C. § 3559(a)(3); 18  
4 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,”  
5 “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

6 6. In addition, the defendant understands that:

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

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

11 **SENTENCING GUIDELINES**

12 7. The defendant understands that the Sentencing Guidelines are advisory, not  
13 mandatory, but that the Court must consider, in determining and imposing sentence, the  
14 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater  
15 punishment than the Manual in effect on the last date that the offense of conviction was  
16 committed, in which case the Court must consider the Guidelines Manual in effect on the last  
17 date that the offense of conviction was committed. The Court must also consider the other  
18 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant  
19 understands that the Guidelines determinations will be made by the Court by a preponderance of  
20 the evidence standard. The defendant understands that although the Court is not ultimately  
21 bound to impose a sentence within the applicable Guidelines range, its sentence must be  
22 reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.  
23 § 3553(a).

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# SENTENCING AGREEMENT

8. The United States and the defendant agree that the following Sentencing Guidelines apply for Count One (15 U.S.C. § 1):

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|-----|---|-----------------------|
| (a) | Base Offense Level, U.S.S.G. §2R1.1(a):   | 12                    |
| (b) | Specific Offense Characteristics:   |                       |
|     | Conduct involved agreement to submit noncompetitive bids, U.S.S.G. §2R1.1(b)(1):  | +1                    |
|     | Volume of commerce (stipulated to be \$7,489,862), U.S.S.G. §2R1.1(b)(2)(A):  | +2                    |
| (c) | The defendant understands and agrees that the government may argue (and the defendant may oppose) that the following Specific Offense Characteristic applies: |                       |
|     | Upward adjustment for aggravating role in the offense, U.S.S.G. §3B1.1(b):  | [+3]                  |
|     | Total:  | 15-18                 |
|     | Fine calculated as one to five percent of the volume of commerce (stipulated to be \$7,489,862), but not less than \$20,000, U.S.S.G. §2R1.1(c)(1):           | \$74,899 to \$374,493 |

9. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1, for a downward adjustment of two or three levels (depending on the application of §3B1.1(b)) for acceptance of responsibility due to the defendant's timely notification of his intention to enter a guilty plea. Therefore, the total Guidelines calculations result in an adjusted offense level of 13 to 15 and a fine of \$74,899 to \$374,493. The United States agrees to recommend a fine of \$74,899.

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

1           11.     The government and the defendant agree to recommend that the Court order the  
2 defendant to pay restitution in the amount of \$256,050 pursuant to U.S.S.G. §5E1.1(a). The  
3 defendant understands that this Plea Agreement is voidable by the government if he fails to pay  
4 the restitution as ordered by the Court. The defendant further agrees that he will not seek to  
5 discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

6           12.     The parties understand that the defendant's Criminal History Category is  
7 determined by the Court.

8           13.     The defendant understands that the sentence to be imposed on him is within the  
9 sole discretion of the sentencing judge. The United States cannot and does not make any  
10 promises or representations as to what sentence the defendant will receive. The United States  
11 will inform the Probation Office and the Court of (a) this Agreement and (b) the nature and  
12 extent of the defendant's activities in this case and all other activities of the defendant that the  
13 United States deems relevant to sentencing. In so doing, the United States may use any  
14 information it deems relevant, including information provided by the defendant both prior and  
15 subsequent to the signing of this Agreement. The United States reserves the right to make any  
16 statement to the Court or the Probation Office concerning the nature of the criminal violation  
17 charged in the Indictment, the participation of the defendant therein, and any other facts or  
18 circumstances that it deems relevant. The United States also reserves the right to comment on or  
19 to correct any representation made by or on behalf of the defendant and to supply any other  
20 information that the Court may require.

21                           **GOVERNMENT'S AGREEMENT**

22           14.     Upon the Court's acceptance of the guilty plea called for by this Plea Agreement  
23 and the imposition of sentence, the United States agrees that it will not bring further criminal  
24 charges against the defendant for any act or offense committed before the date of signature of  
25 this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy or in violation  
26 of any related criminal law involving the purchase of properties at public real estate foreclosure  
27 auctions in the Northern District of California ("Relevant Offenses"). The nonprosecution terms  
28 of this paragraph do not apply to (a) any acts of perjury or subornation of perjury (18 U.S.C. §§

1 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of  
2 justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit  
3 such offenses, (b) civil matters of any kind, (c) any violation of the federal tax or securities laws  
4 or conspiracy to commit such offenses, or (d) any crime of violence.

5 15. The defendant understands that he may be subject to administrative action by  
6 federal or state agencies other than the United States Department of Justice, Antitrust Division,  
7 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in  
8 no way controls whatever action, if any, other agencies may take.

9 **REPRESENTATION BY COUNSEL**

10 16. The defendant has reviewed all legal and factual aspects of this case with his  
11 attorney and is fully satisfied with his attorney's legal representation. The defendant has  
12 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory  
13 explanations from his attorney concerning each paragraph of this Plea Agreement and  
14 alternatives available to the defendant other than entering into this Plea Agreement. After  
15 conferring with his attorney and considering all available alternatives, the defendant has made a  
16 knowing and voluntary decision to enter into this Plea Agreement.

17 **VOLUNTARY PLEA**

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

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**VIOLATION OF PLEA AGREEMENT**

18. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding<sup>1</sup> is pending, that the defendant has violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission, and may also notify counsel by telephone, of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant will be subject to prosecution for any federal crime of which the United States has knowledge, including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant may seek Court review of any determination made by the United States under this paragraph to void any of its obligations under this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of signature of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

19. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him. In

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<sup>1</sup> For the purposes of this provision, Federal Proceeding is defined as the current federal investigation of violations of federal antitrust and related criminal laws involving the purchase of properties at public real estate foreclosure auctions in the Northern District of California, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party. Federal Proceeding includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding.

1 addition, the defendant unconditionally waives his right to challenge the use of such evidence in  
2 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

3 **ENTIRETY OF AGREEMENT**

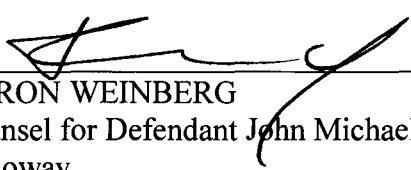
4 20. This Plea Agreement constitutes the entire agreement between the United States  
5 and the defendant concerning the disposition of the criminal charges in this case. This Plea  
6 Agreement cannot be modified except in writing, signed by the United States and the defendant.

7 21. The undersigned attorneys for the United States have been authorized by the  
8 Attorney General of the United States to enter this Plea Agreement on behalf of the United  
9 States.


10 22. A facsimile or PDF signature will be deemed an original signature for the purpose  
11 of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
12 executing this Plea Agreement.

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16 JOHN MICHAEL GALLOWAY  
16 Defendant

17  
18 Dated: 11/16/16

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20   
21 DORON WEINBERG  
21 Counsel for Defendant John Michael  
22 Galloway  
22 The Law Offices of Doron Weinberg  
23 523 Octavia Street  
23 San Francisco, CA 94102

24  
25 Dated: 11/16/16  
26  
27  
28

  
MICAH L. RUBBO  
ALEXIS J. LOEB  
Trial Attorneys  
United States Department of Justice  
Antitrust Division

Dated: 11/16/16