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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA

v.

NICHOLAS DIAZ,

Defendant.

No. CR 14-00607 PJH

PLEA AGREEMENT

The United States of America and NICHOLAS DIAZ (“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 – NICHOLAS DIAZ – 1
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(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).

24 SENTENCING AGREEMENT

25 8. The United States and the defendant agree that the following Sentencing
26 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)	Conduct involved agreement to submit noncompetitive bids, U.S.S.G. §2R1.1(b)(1):	+1
(c)	Downward adjustment for minor role in the offense, U.S.S.G. §3B1.2(b)	-2
	Total:	11
	Fine calculated as one to five percent of the volume of commerce (stipulated to be \$468,420), but not less than \$20,000, U.S.S.G. §2R1.1(c)(1):	\$20,000 – \$23,421

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 levels 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 nine, for a jail term of four to ten months and a fine of \$20,000. The United States and the defendant agree to recommend that the Court order the defendant to pay no fine pursuant to U.S.S.G. §5E1.2(e) due to the inability of the defendant to pay a fine.

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.

11. The government and the defendant agree to recommend that the Court order the defendant to pay no restitution pursuant to U.S.S.G. §5E1.1(a). The defendant understands that this Plea Agreement is voidable by the government if he fails to pay the restitution as ordered by the Court. The defendant further agrees that he will not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

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

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

14 **GOVERNMENT'S AGREEMENT**

15 14. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement
16 and the imposition of sentence, the United States agrees that it will not bring further criminal
17 charges against the defendant for any act or offense committed before the date of signature of
18 this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy or in violation
19 of any related criminal law involving the purchase of properties at public real estate foreclosure
20 auctions in the Northern District of California ("Relevant Offenses"). The nonprosecution terms
21 of this paragraph do not apply to (a) any acts of perjury or subornation of perjury (18 U.S.C. §§
22 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of
23 justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit
24 such offenses, (b) civil matters of any kind, (c) any violation of the federal tax or securities laws
25 or conspiracy to commit such offenses, or (d) any crime of violence.

26 15. The defendant understands that he may be subject to administrative action by
27 federal or state agencies other than the United States Department of Justice, Antitrust Division,

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1 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
2 no way controls whatever action, if any, other agencies may take.

3 **REPRESENTATION BY COUNSEL**

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

11 **VOLUNTARY PLEA**

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

17 **VIOLATION OF PLEA AGREEMENT**

18 18. The defendant agrees that, should the United States determine in good faith,
19 during the period that any Federal Proceeding¹ is pending, that the defendant has violated any
20 provision of this Plea Agreement, the United States will notify counsel for the defendant in
21 writing by personal or overnight delivery, email, or facsimile transmission, and may also notify
22 counsel by telephone, of its intention to void any of its obligations under this Plea Agreement

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24 ¹ For the purposes of this provision, Federal Proceeding is defined as the current federal
25 investigation of violations of federal antitrust and related criminal laws involving the purchase of
26 properties at public real estate foreclosure auctions in the Northern District of California, any
27 other federal investigation resulting therefrom, and any litigation or other proceedings arising or
28 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.

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

ENTIRETY OF AGREEMENT

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

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

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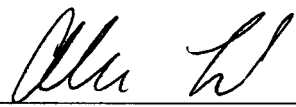
22. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.


NICHOLAS DIAZ
Defendant

Dated: 11/16/16


ERIK B. LEVIN
Counsel for Defendant Nicholas Diaz
Law Office of Erik B. Levin
2001 Stuart Street
Berkeley, California 94703

Dated: 11/16/16


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

Dated: 11/16/16