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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA v. DAVID MARGEN, Defendant.	No. CR-11-00425 PJH **PLEA AGREEMENT**

The United States of America and David Margen ("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;

(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(b)-(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 Sentencing Guidelines range stipulated by the parties in Paragraph 9 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, shall 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. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment at arraignment and plead guilty to a four-count Information to be filed in the United States District Court for the Northern District of California. Count One of the Information charges the defendant with participating in a conspiracy to suppress and restrain competition by rigging bids to obtain selected real estate offered at Alameda County, California public real estate foreclosure auctions in the Northern District of California, in unreasonable restraint of interstate trade and commerce, in violation of the Sherman Act, 15 U.S.C. § 1, beginning as early as March 2009 and continuing until in or about June 2010. Count Two of the Information charges the defendant with conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349, in Alameda County,

California from as early as March 2009 until in or about June 2010. Count Three of the Information charges the defendant with participating in a conspiracy to suppress and restrain competition by rigging a bid to obtain a selected real estate offered at a Contra Costa County, California public real estate foreclosure auction in the Northern District of California, in unreasonable restraint of interstate trade and commerce, in violation of the Sherman Act, 15 U.S.C. § 1, in or about March 2009. Count Four of the Information charges the defendant with conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349, in Contra Costa County, California in or about March 2009.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges described in Paragraph 2 above 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. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

FACTUAL BASIS FOR CHARGED OFFENSES

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) As to Count One of the Information:

Beginning as early as March 2009 and continuing until in or about June 2010 ("relevant period"), the defendant participated in a conspiracy to rig bids to obtain selected real estate at public real estate foreclosure auctions held in Alameda County, California, located in the Northern District of California. The primary purpose of this conspiracy was to suppress and restrain competition and obtain selected real estate offered at Alameda County public real estate foreclosure auctions at non-competitive prices. During the relevant period, the defendant and his co-conspirators agreed not to bid against one another and to allocate selected real estate among themselves. To carry out their conspiracy, the defendant and his co-conspirators refrained from bidding on or refrained from bidding up the price for selected auctioned real estate. In many instances, the defendant and his co-conspirators held private auctions, open only to members of the conspiracy, to rebid this real estate. The defendant and his co-conspirators awarded this real estate to the conspirator who submitted the highest bid at the private auctions. The defendant and his co-conspirators distributed the proceeds of the private auctions as payoffs to the other, unsuccessful bidders in the private auctions, based upon a predetermined formula agreed upon by the members of the conspiracy, for refraining from bidding on these properties at the public auction.

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.

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.

(b) As to Count Two of the Information:

During the relevant period, the defendant and his co-conspirators agreed to knowingly devise or participate in a scheme to defraud or to obtain money or property by means of materially false pretenses, representations, or promises from the mortgage holders and owners of real estate that was being sold at public real estate foreclosure auctions in Alameda County, California, located in the Northern District of California. The scheme to defraud consisted of suppressing competition at public auctions of real estate by agreeing not to bid against one another at the public auctions, by acquiring the real estate at a price lower than would have resulted from fully competitive auctions, and by holding second, private auctions and dividing the profits of the scheme (the difference between the public and private auction prices) among the co-conspirators. In other words, the participants intentionally manipulated the sales price of real estate, causing false, artificially low sales prices to be reported and paid to victims of the scheme.

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

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

(c) As to Count Three of the Information:

In or about March 2009 ("second relevant period"), the defendant participated in a conspiracy to rig a bid to obtain selected real estate at a public real estate foreclosure auction held in Contra Costa County, California, located in the Northern District of California. The primary purpose of this conspiracy was to suppress and restrain competition and to obtain the selected real estate offered at the Contra Costa County public real estate foreclosure auction at a non-competitive price. During the second relevant period, the defendant and his co-conspirators agreed not to bid against one another and to allocate the selected real estate among themselves. To carry out their conspiracy, the defendant and his co-conspirators refrained from bidding on or refrained from bidding up the price for the selected auctioned real estate. The defendant and his co-conspirators held a private auction, open only to members of the conspiracy, to rebid this real estate. The defendant and his co-conspirators awarded this real estate to the conspirator who submitted the highest bid at the private auction. The defendant and his co-conspirators distributed the proceeds of the private auction as payoffs to the other, unsuccessful bidders in the private auction, based upon a predetermined formula agreed upon by the members of the conspiracy, for refraining from bidding on this real estate at the public auction.

During the second 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 auction that was subject to the bid-rigging conspiracy.

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During the second 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.

(d) As to Count Four of the Information:

During the second relevant period, the defendant and his co-conspirators agreed to knowingly devise or participate in a scheme to defraud or to obtain money or property by means of materially false pretenses, representations, or promises from the mortgage holders and owners of real estate that was being sold at public real estate foreclosure auctions in Contra Costa County, California, located in the Northern District of California. The scheme to defraud consisted of suppressing competition at a public auction of real estate by agreeing not to bid against one another at the public auction, by acquiring the real estate at a price lower than would have resulted from a fully competitive auction, and by holding a second, private auction and dividing the profits of the scheme (the difference between the public and private auction prices) among the co-conspirators. In other words, the participants intentionally manipulated the sales price of real estate, causing a false, artificially low sales price to be reported and paid to victims of the scheme.

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

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

<u>POSSIBLE MAXIMUM SENTENCE</u>

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

(a) a term of imprisonment for ten 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

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

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

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

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

(c) a term of supervised release of not more than five years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to an additional three years in prison (18 U.S.C. § 3559(a)(2); 18 U.S.C. § 3583(b)(1) and (e)(3); and U.S.S.G. § 5D1.2(a)(1)).

7. In addition, the defendant understands that:

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

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

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,

along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance-of-the-evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce or loss attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

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

(a) For Count One (15 U.S.C. § 1 – Alameda County):

i.	Base Offense Level, U.S.S.G. § 2R1.1(a):	12
ii.	Conduct involved agreement to submit non-competitive bids, U.S.S.G. § 2R1.1(b)(1):	+1
iii.	Volume of Commerce (stipulated to be $6.1 million), U.S.S.G. § 2R1.1(b)(2)(A):	+2
iv.	Fine calculated as one to five percent of the volume of commerce (stipulated to be $6.1 million), but not less than $20,000, U.S.S.G. § 2R1.1(c)(1):	$61,000 to $305,000
	Total:	15

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(b) For Count Two (18 U.S.C. § 1349 – Alameda County):

i.	Base Offense Level, U.S.S.G. § 2B1.1(a)(1):	7
ii.	Loss > $400,000, U.S.S.G. § 2B1.1(b)(1)(H):	+14
iii.	10 or more victims, U.S.S.G. § 2B1.1(b)(2)(A):	+2
iv.	Fine, U.S.S.G. § 5E1.2(c)(3):	$10,000 to $100,000
Total:		23

(c) For Count Three (15 U.S.C. § 1 – Contra Costa County):

i.	Base Offense Level, U.S.S.G. § 2R1.1(a):	12
ii.	Conduct involved agreement to submit non-competitive bids, U.S.S.G. § 2R1.1(b)(1):	+1
iii.	Volume of Commerce (stipulated to be $0), U.S.S.G. § 2R1.1(b)(2):	+0
iv.	Fine calculated as one to five percent of the volume of commerce (stipulated to be $0), but not less than $20,000, U.S.S.G. § 2R1.1(c)(1):	$20,000
Total:		13

(d) For Count Four (18 U.S.C. § 1349 – Contra Costa County):

i.	Base Offense Level, U.S.S.G. § 2B1.1(a)(1):	7
ii.	Loss > $30,000, U.S.S.G. § 2B1.1(b)(1)(D):	+6
iii.	Fine, U.S.S.G. § 5E1.2(c)(3):	$3,000 to $30,000
Total:		13

Pursuant to U.S.S.G. § 3D1.3(b), the counts involved offenses of the same general type to which different Guidelines apply; therefore, the offense Guideline to be applied is the highest offense level.

10. The United States agrees that it will make a motion, pursuant to U.S.S.G. § 3E1.1, 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 calculations result in a combined offense level of 20, for a jail term of 33 to 41 months and a fine of $7,500 to $75,000.

11. The defendant understands that the Court will order him to pay a special assessment of $100 per count ($400 total) 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 Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0.

12. The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of certain offenses. The government and the defendant agree to recommend that the Court order the defendant to pay restitution in the amount of $63,114, 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.

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

14. The defendant understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence the defendant will receive. However, the United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of the defendant's activities in this case and all other activities of the defendant that the United States deems relevant to sentencing; and (c) the nature and extent of the defendant's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by the defendant both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the criminal violations charged in the attached Information, the participation of the defendant therein, and any other facts or

circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of the defendant and to supply any other information that the Court may require.

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

16. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 18 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offenses, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

17. The United States and the defendant understand that the Court retains complete discretion to accept or reject either party's sentencing recommendation. The defendant

understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with either party's sentencing recommendation, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

18. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the purchase of real estate at public 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"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

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

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

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

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

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

GOVERNMENT'S AGREEMENT

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

REPRESENTATION BY COUNSEL

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

VOLUNTARY PLEA

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

VIOLATION OF PLEA AGREEMENT

22. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 18 of this Plea Agreement, or has

otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission, and may also notify his 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 shall 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 the 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 shall be tolled for the period between the date of the signing of this Plea Agreement and six months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

23. 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 based on the defendant's violation of the 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 any such further prosecution. 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

24. 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.

25. 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.

26. A facsimile signature shall 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.

David Margen

DAVID MARGEN
Defendant

Dated: 8/10/11

[signature]

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

Dated: 8-1-11

for EWS

EDWARD SWANSON
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Dated: 8/10/11 for EWS