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FILED

MAR 4 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY W DEPUTY CLERK

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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14

15 UNITED STATES OF AMERICA,)
16)
17 Plaintiff,)
18 v.)
19 YAMA MARIFAT,)
20 Defendant.)
21 _____)

No. 2:11-CR-0039 EJB

PLEA and COOPERATION AGREEMENT

22
23 I.

24 INTRODUCTION

25 A. **Scope of Agreement:** The Information to be filed in this
26 case charges the defendant, YAMA MARIFAT, with one count of
27 participating in a conspiracy to suppress and restrain
28 competition by rigging bids to obtain selected real estate

1 offered at San Joaquin County, California public real estate
2 auctions in the Eastern District of California in unreasonable
3 restraint of interstate trade and commerce, in violation of the
4 Sherman Act, 15 U.S.C. § 1, and with one count of conspiracy to
5 commit mail fraud in violation of 18 U.S.C. § 1349. This
6 document contains the complete Plea and Cooperation Agreement
7 between the United States Attorney's Office for the Eastern
8 District of California and the United States Department of
9 Justice, Antitrust Division (collectively the "government"), and
10 the defendant regarding this case. This Plea and Cooperation
11 Agreement is limited to the United States Attorney's Office for
12 the Eastern District of California and the United States
13 Department of Justice, Antitrust Division, and cannot bind any
14 other federal, state, or local prosecuting, administrative, or
15 regulatory authorities.
16
17

18 **B. Court Not a Party:** The Court is not a party to this
19 Plea and Cooperation Agreement. Sentencing is a matter solely
20 within the discretion of the Court, the Court is under no
21 obligation to accept any recommendations made by the government,
22 and the Court may in its discretion impose any sentence it deems
23 appropriate, up to and including the statutory maximum stated in
24 this Plea and Cooperation Agreement. If the Court should impose
25 any sentence up to the maximum established by the statute, the
26 defendant cannot, for that reason alone, withdraw his guilty
27 plea, and he will remain bound to fulfill all of the obligations
28

1 under this Plea and Cooperation Agreement. The defendant
2 understands that neither the government, defense counsel, nor the
3 Court can make a binding prediction or promise regarding the
4 sentence he will receive.

5 II.

6 DEFENDANT'S OBLIGATIONS

7
8 **A. Waiver of Indictment and Guilty Plea:** The defendant
9 will waive indictment by grand jury, waive venue, and plead
10 guilty to a two-count Information, substantially in the form
11 attached hereto as Exhibit B, charging him with conspiring to rig
12 bids in violation of 15 U.S.C. § 1 and conspiracy to commit mail
13 fraud in violation of 18 U.S.C. § 1349. The defendant agrees
14 that he is, in fact, guilty of those charges and that the facts
15 set forth in the Factual Basis attached hereto as Exhibit A are
16 true and accurate.

17
18 **B. Restitution:** The Mandatory Victim Restitution Act
19 requires the Court to order restitution to the victims of certain
20 offenses. The government and defendant agree to recommend that
21 the Court order defendant to pay restitution in the amount of
22 \$79,000. Payment should be made at such times and in such
23 amounts as ordered by the Court, and should be by cashier's or
24 certified check made payable to the Clerk of the Court. The
25 defendant understands that this Plea and Cooperation Agreement is
26 voidable by the government if he fails to pay the restitution as
27 ordered by the Court. Defendant further agrees that he will not
28

1 seek to discharge any restitution obligation or any part of such
2 obligation in any bankruptcy proceeding.

3 **C. Special Assessment:** The defendant agrees to pay a
4 special assessment of \$100 for each count (total of \$200)
5 immediately before the sentencing hearing by delivering a check
6 or money order to the United States Probation Office payable to
7 the United States District Court.
8

9 **D. Agreement to Cooperate:** The defendant agrees to
10 cooperate fully with the government and any other federal, state,
11 or local law enforcement agency, as directed by the government.
12 As used in this Agreement, "cooperation" requires the defendant:
13 (1) to respond truthfully and completely to all questions,
14 whether in interviews, in correspondence, telephone
15 conversations, before a grand jury, or at any trial or other
16 court proceeding; (2) to attend all meetings, grand jury
17 sessions, trials, and other proceedings at which the defendant's
18 presence is requested by the government or compelled by subpoena
19 or court order; (3) to produce voluntarily any and all documents,
20 records, or other tangible evidence requested by the government;
21 (4) not to participate in any criminal activity while cooperating
22 with the government; and (5) to disclose to the government the
23 existence and status of all money, property, or assets, of any
24 kind, derived from or acquired as a result of, or used to
25 facilitate the commission of, the defendant's illegal activities
26 or the illegal activities of any conspirators.
27
28

1 If the defendant commits any crimes or if any of the
2 defendant's statements or testimony prove to be knowingly false,
3 misleading, or materially incomplete, or if the defendant
4 otherwise violates this Plea and Cooperation Agreement in any
5 way, the government will no longer be bound by its
6 representations to the defendant concerning the limits on
7 criminal prosecution and sentencing as set forth herein. The
8 determination whether the defendant has violated the Plea and
9 Cooperation Agreement will be under a preponderance-of-the-
10 evidence standard. If the defendant violates the Plea and
11 Cooperation Agreement, he shall thereafter be subject to
12 prosecution for any federal criminal violation of which the
13 government has knowledge, including but not limited to perjury,
14 false statements, and obstruction of justice. Because
15 disclosures pursuant to this Agreement will constitute a waiver
16 of the Fifth Amendment privilege against compulsory self-
17 incrimination, any such prosecution may be premised on statements
18 and/or information provided by the defendant. Moreover, any
19 prosecutions that are not time-barred by the applicable statute
20 of limitations as of the date of this Agreement may be commenced
21 in accordance with this paragraph, notwithstanding the expiration
22 of the statute of limitations between the signing of this
23 Agreement and the commencement of any such prosecutions. The
24 defendant agrees to waive all defenses based on the statute of
25 limitations or delay of prosecution with respect to any

1 prosecutions that are not time-barred as of the date of this
2 Agreement.

3 If it is determined that the defendant has violated any
4 provision of this Agreement or if the defendant successfully
5 moves to withdraw his plea: (1) all statements made by the
6 defendant to the government or other designated law enforcement
7 agents, or any testimony given by the defendant before a grand
8 jury or other tribunal, whether before or after this Agreement,
9 shall be admissible in evidence in any criminal, civil, or
10 administrative proceedings hereafter brought against the
11 defendant; and (2) the defendant shall assert no claim under the
12 United States Constitution, any statute, Rule 11(f) of the
13 Federal Rules of Criminal Procedure, Rule 410 of the Federal
14 Rules of Evidence, or any other federal rule, that statements
15 made by the defendant before or after this Agreement, or any
16 leads derived therefrom, should be suppressed. By signing this
17 Agreement, the defendant waives any and all rights in the
18 foregoing respects.

19
20
21 **E. Payment of Fine:** The defendant agrees to pay a criminal
22 fine of \$20,000 if so ordered by the Court. Defendant
23 understands that the criminal fine ordered by the Court may be
24 based upon the defendant's ability to pay a criminal fine in
25 addition to restitution, as agreed upon and set forth in this
26 Plea and Cooperation Agreement and as determined by the United
27 States Probation Office. The government's recommendation with
28

1 respect to any such criminal fine is set forth in paragraph III.
2 D. of this Plea and Cooperation Agreement.

3 **III.**

4 **THE GOVERNMENT'S OBLIGATIONS**

5 **A. Incarceration Range:** The government will recommend that
6 the defendant be sentenced to the bottom of the applicable
7 Guideline range for his offense, as determined by the United
8 States Probation Office.

9
10 **B. Acceptance of Responsibility:** The government agrees
11 that a two-level reduction in defendant's offense level for his
12 full and clear demonstration of acceptance of responsibility is
13 appropriate under United States Sentencing Guidelines (U.S.S.G.)
14 § 3E1.1, will not oppose such a reduction, and will so move under
15 § 3E1.1(a), so long as the defendant pleads guilty, meets with
16 and assists the probation officer in the preparation of the pre-
17 sentence report, is truthful and candid with the probation
18 officer and the Court, and does not otherwise engage in conduct
19 that constitutes obstruction of justice within the meaning of
20 U.S.S.G. § 3C1.1, either in the preparation of the pre-sentence
21 report or during the sentencing proceeding.

22
23 **C. Reduction of Sentence for Cooperation:** The government
24 agrees to recommend at the time of sentencing that the
25 defendant's sentence of imprisonment be reduced to reflect his
26 substantial assistance to the government in the investigation and
27 prosecution of others, pursuant to U.S.S.G. § 5K1.1. The
28

1 defendant understands that he must comply with paragraph II. D.
2 of this Plea and Cooperation Agreement. The defendant
3 understands that the government's recommended reduction in his
4 sentence will depend upon the level of assistance the government
5 determines that the defendant has provided. The defendant
6 further understands that a motion pursuant to U.S.S.G. § 5K1.1 is
7 only a recommendation and is not binding on the Court.
8

9 Other than as set forth above, the government agrees that
10 any incriminating information provided by the defendant during
11 his cooperation will not be used in determining the applicable
12 Guideline range in his case, pursuant to U.S.S.G. § 1B1.8.
13

14 **D. Fine:** The government agrees to recommend that the
15 defendant be ordered to pay a fine of \$20,000, pursuant to
16 U.S.S.G. § 2R1.1(c)(1) or other amount as recommended by the
17 United States Probation Office.

18 IV.

19 ELEMENTS OF THE OFFENSE

20 Had this case gone to trial, the government would have to
21 prove beyond a reasonable doubt the following elements:
22

23 For Count One, Sherman Act:

24 First, that the defendant entered into a conspiracy;

25 Second, that the conspiracy was an unreasonable restraint of
26 trade; and

27 Third, that the conspiracy was in or affected interstate
28 commerce in the United States.

1 For Count Two, Conspiracy to Commit Mail Fraud:

2 First, that the defendant knowingly devised or participated
3 in a conspiracy to defraud or to obtain money or property by
4 means of materially false pretenses, representations, or
5 promises;

6
7 Second, the defendant knew that the scheme was deceptive or
8 that the pretenses, representations, or promises were false;

9 Third, that the defendant did so with the intent to defraud;
10 and

11 Fourth, for the purpose of carrying out the scheme or
12 attempting to do so, the defendant knowingly used and caused to
13 be used the United States mails or private or commercial carrier
14 in the manner charged.

15
16 V.

17 **MAXIMUM SENTENCE**

18 **A. Maximum Penalty:** For Count One, the maximum sentence the
19 Court can impose for a violation of 15 U.S.C. § 1 is ten years
20 incarceration; a fine in an amount equal to the greatest of (1)
21 \$1,000,000, (2) twice the gross pecuniary gain the conspirators
22 derived from the crime, or (3) twice the gross pecuniary loss
23 caused to the victims of the crime by the conspirators; a three-
24 year period of supervised release; and a special assessment of
25 \$100. For Count Two, the maximum sentence the Court can impose
26 for a violation of 18 U.S.C. § 1349 is 30 years incarceration; a
27 fine of \$1,000,000; a five-year period of supervised release; and
28

1 a special assessment of \$100.

2 **B. Violations of Supervised Release:** The defendant
3 understands that if he violates a condition of supervised release
4 at any time during the term of supervised release, the Court may
5 revoke the term of supervised release and require the defendant
6 to serve up to two additional years of imprisonment.
7

8 **VI.**

9 **SENTENCING DETERMINATION**

10 **A. Statutory Authority:** The defendant understands that the
11 Court must consult the Federal Sentencing Guidelines (as
12 promulgated by the Sentencing Commission pursuant to the
13 Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28
14 U.S.C. §§ 991-998, and as modified by United States v. Booker and
15 United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738 (2005)) and
16 must take them into account when determining a final sentence.
17 The defendant understands that the Court will determine a non-
18 binding and advisory Guideline sentencing range for this case
19 pursuant to the Sentencing Guidelines. The defendant further
20 understands that the Court will consider whether there is a basis
21 for departure from the Guideline sentencing range (either above
22 or below the Guideline sentencing range) because there exists an
23 aggravating or mitigating circumstance of a kind, or to a degree,
24 not adequately taken into consideration by the Sentencing
25 Commission in formulating the Guidelines. The defendant further
26 understands that the Court, after consultation and consideration
27
28

1 of the Sentencing Guidelines, must impose a sentence that is
2 reasonable in light of the factors set forth in 18 U.S.C.
3 § 3553(a).

4 **B. Stipulations Affecting Guidelines Calculations:** The
5 government and the defendant agree that there is no material
6 dispute as to the following Sentencing Guidelines variables and
7 therefore stipulate and agree to the following:
8

9 For Count One:

10	§ 2R1.1(a)	Base Offense Level	12
11	(b) (1)	Bid Rigging	+1
12	(b) (2) (A)	Volume of Commerce > \$1 million	+2
13		Total	15
14	(c) (1)	Fine 1 - 5% of \$2.5 million	

15
16 For Count Two:

17	§2 B1.1(a) (1)	Base Offense Level	7
18	(b) (1) (D)	Loss > \$70,000	+8
19		Total	15

20 The Guidelines calculation results in an offense level of 15, for
21 a jail term of 18 to 24 months and a fine between \$25,000 and
22 \$125,000.
23

24 **1. Acceptance of Responsibility:** Pursuant to § 3E1.1
25 and as described in more detail in paragraph III. B. above, the
26 defendant's total offense level is decreased by two levels
27 because of his acceptance of responsibility. The Adjusted Total
28 Offense Level is therefore 13.

1 **2. Criminal History:** The parties agree that the
2 defendant's criminal history is to be determined by the United
3 States Probation Office.

4 **3. Departures or Other Enhancements or Reductions:**
5
6 The parties stipulate and agree that they will not seek or argue
7 in support of any other specific offense characteristics, Chapter
8 Three adjustments, departures, or cross-references, other than
9 those contemplated in the foregoing stipulations. Defense
10 counsel may argue for a variance or deviation from the Sentencing
11 Guidelines under 18 U.S.C. § 3553(a). The government reserves
12 its right to oppose such deviation or variance. If either party
13 breaches this provision, the other party shall be relieved of all
14 of its obligations under this Plea and Cooperation Agreement.
15

16 **VII.**

17 **WAIVERS**

18 **A. Waiver of Constitutional Rights:** The defendant
19 understands that by pleading guilty he is waiving the following
20 constitutional rights: (a) to plead not guilty and to persist in
21 that plea if already made; (b) to be tried by a jury; (c) to be
22 assisted at trial by an attorney, who would be appointed if
23 necessary; (d) to subpoena witnesses to testify on his behalf;
24 (e) to confront and cross-examine witnesses against him; and
25 (f) not to be compelled to incriminate himself.
26

27 **B. Waiver of Appeal and Collateral Attack:** The defendant
28 understands that the law gives him a right to appeal his

1 conviction and sentence. He agrees as part of his plea, however,
2 to give up the right to appeal the conviction and the right to
3 appeal any aspect of the sentence imposed in this case so long as
4 his sentence is no longer than the top of the Sentencing
5 Guidelines range determined by the Court, consistent with the
6 stipulations set forth above about the Sentencing Guidelines
7 variables.
8

9 Regardless of the sentence he receives, the defendant also
10 gives up any right he may have to bring a post-appeal attack on
11 his conviction or his sentence. He specifically agrees not to
12 file a motion under 28 U.S.C. § 2255 or § 2241 attacking his
13 conviction or sentence.
14

15 If the defendant ever attempts to vacate his plea, dismiss
16 the underlying charges, or reduce or set aside his sentence on
17 any of the counts to which he is pleading guilty, the government
18 shall have the right to: (1) prosecute the defendant on any of
19 the counts to which he pleaded guilty; (2) reinstate any counts
20 that may be dismissed pursuant to this Plea and Cooperation
21 Agreement; and (3) file any new charges that would otherwise be
22 barred by this Plea and Cooperation Agreement. The decision to
23 pursue any or all of these options is solely in the discretion of
24 the United States Attorney's Office and the Department of
25 Justice, Antitrust Division. By signing this Plea and
26 Cooperation Agreement, the defendant agrees to waive any
27 objections, motions, and defenses he might have to the
28

1 government's decision. In particular, he agrees not to raise any
2 objections based on the passage of time with respect to such
3 counts, including, but not limited to, any statutes of limitation
4 or any objections based on the Speedy Trial Act or the Speedy
5 Trial Clause of the Sixth Amendment.
6

7 **C. Waiver of Attorneys' Fees and Costs:** The defendant
8 agrees to waive all rights under the "Hyde Amendment," Section
9 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or
10 other litigation expenses in connection with the investigation
11 and prosecution of all charges in the above-captioned matter and
12 of any related allegations.
13

14 **VIII.**

15 **ENTIRE PLEA AND COOPERATION AGREEMENT**

16 Other than this Plea and Cooperation Agreement, no
17 agreement, understanding, promise, or condition between the
18 government and the defendant exists, nor will such agreement,
19 understanding, promise, or condition exist unless it is committed
20 to writing and signed by the defendant, counsel for the
21

22 //

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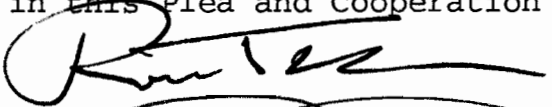

1 defendant, and counsel for the government.

2 IX.

3 APPROVALS AND SIGNATURES

4
5 A. Defense Counsel: I have read this Plea and Cooperation
6 Agreement and have discussed it fully with my client. The Plea
7 and Cooperation Agreement accurately and completely sets forth
8 the entirety of the agreement. I concur in my client's decision
9 to plead guilty as set forth in this Plea and Cooperation
10 Agreement.

11
12 DATED: 2/24/11



Richard Tabor, Esq.
William H. DuBois, Esq.
Attorneys for Defendant

13
14
15 B. Defendant: I have read this Plea and Cooperation
16 Agreement and carefully reviewed every part of it with my
17 attorney. I understand it, and I voluntarily agree to it.
18 Further, I have consulted with my attorney and fully understand
19 my rights with respect to the provisions of the Sentencing
20 Guidelines that may apply to my case. No other promises or
21 inducements have been made to me, other than those contained in
22 this Plea and Cooperation Agreement. In addition, no one has
23 threatened or forced me in any way to enter into this Plea and
24

25 //


26 //

27 //

28 //

1 Cooperation Agreement. Finally, I am satisfied with the
2 representation of my attorney in this case.

3
4 DATED: 2-24-2011


5 YAMA MARIFAT, Defendant
6
7

8 **C. Attorneys for the Government:** The undersigned accept
9 and agree to this Plea and Cooperation Agreement on behalf of the
10 government.
11

12 DATED: March 4, 2011

BENJAMIN B. WAGNER
United States Attorney

14
15 By: 

16 RUSSELL L. CARLBERG
17 Assistant U.S. Attorney
18
19

20 CHRISTINE A. VARNEY
Assistant Attorney General
21

22 By: 

23 BARBARA J. NELSON
24 RICHARD B. COHEN
25 ALBERT B. SAMBAT
Trial Attorneys
U.S. Department of Justice
Antitrust Division
26
27
28

1 **EXHIBIT "A"**

2 **Factual Basis for Plea**

3 **Bid Rigging**

4
5 At trial, the government would prove the following facts
6 beyond a reasonable doubt:

7 Beginning in or about April 2009 and continuing until in or
8 about October 2009 (relevant period), defendant participated in a
9 conspiracy to rig bids at public real estate auctions held in San
10 Joaquin County, California, located in the Eastern District of
11 California. The primary purpose of this conspiracy was to
12 suppress and restrain competition and obtain selected real estate
13 offered at San Joaquin County public auctions at non-competitive
14 prices. During the relevant period, defendant and his co-
15 conspirators reached agreements not to bid against one another
16 and to allocate properties among themselves. To carry out their
17 agreements, defendant and his co-conspirators refrained from
18 bidding or refrained from bidding up the price for auctioned
19 properties. In many instances, defendant and his co-conspirators
20 held private auctions, open only to members of the conspiracy, to
21 rebid the property. Defendant and his co-conspirators awarded
22 the property to the conspirators who submitted the highest bid at
23 the private auctions. Defendant and his co-conspirators
24 distributed the proceeds of the private auctions as payoffs to
25 the other, unsuccessful bidders in the private auction, based
26 upon a predetermined formula agreed upon by the members of the
27 conspiracy, for refraining from bidding on the property at the
28 public auction.

19 During the relevant period, the business activities of the
20 defendant and co-conspirators were within the flow of, and
21 substantially affected, interstate trade and commerce. For
22 example, mortgage holders located in states other than California
23 held mortgages, appointed trustees, and received proceeds from
24 the public auctions that were subject to the bid-rigging
25 agreement.

24 **Conspiracy to Commit Mail Fraud**

25 Beginning in or about April 2009 and continuing until in or
26 about October 2009 (relevant period), defendant knowingly devised
27 or participated in a conspiracy to defraud or to obtain money or
28 property by means of materially false pretenses, representations,
or promises from the mortgage holders and owners of properties
that were being sold at public real estate foreclosure auctions
in the Eastern District of California. That conspiracy to

1 defraud consisted of suppressing competition at the public
2 auction of properties by agreeing not to bid against one another
3 at the public auction, by acquiring the property at a lower price
4 than would have resulted from a fully competitive auction, and by
5 holding a second, private auction and dividing the profits of the
6 scheme (the difference between the public and private auction
prices) among themselves. In other words, the participants
intentionally manipulated the sales price of properties, causing
false, artificially low sales prices to be reported and paid to
victims of the scheme.

7 The defendant and others, for the purpose of executing the
8 conspiracy described above and attempting to do so, knowingly
9 used and caused to be used the United States mails or private or
10 commercial carrier. For example, trustees and government
11 agencies used the United States mail to transmit grant deeds and
other title documents to participants in the conspiracy to
defraud. These mailings were foreseeable to defendant in the
ordinary course of business.