

1 BENJAMIN B. WAGNER
United States Attorney
2 RUSSELL L. CARLBERG
Assistant U.S. Attorney
3 501 "I" Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2700

5 ANNA TRYON PLETCHER
TAI S. MILDER
6 Trial Attorneys
U.S. Department of Justice
7 Antitrust Division
8 450 Golden Gate Avenue, Room 10-0101
San Francisco, CA 94102
9 Telephone: (415) 436-6660

FILED

FEB 24 2012

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

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

15 UNITED STATES OF AMERICA,)
16)
Plaintiff,)
17)
v.)
18)
WILEY C. CHANDLER,)
19)
Defendant.)
20)
_____)

No. 2:11-CR-511 EJG

PLEA and COOPERATION AGREEMENT

21
22 I.

23 INTRODUCTION

24
25 A. **Scope of Agreement:** The Indictment in this case charges
26 the defendant, WILEY C. CHANDLER, with one count of participating
27 in a conspiracy to suppress and restrain competition by rigging
28 bids to obtain selected properties offered at nonjudicial public

1 real estate foreclosure auctions in San Joaquin County in the
2 Eastern District of California, in unreasonable restraint of
3 interstate trade and commerce, in violation of the Sherman Act,
4 Title 15, United States Code, Section 1, and with one count of
5 conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349.
6 This document contains the complete Plea and Cooperation
7 Agreement between the United States Attorney's Office for the
8 Eastern District of California and the United States Department
9 of Justice, Antitrust Division (collectively the "government"),
10 and 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.
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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
6 **II.**

7 **DEFENDANT'S OBLIGATIONS**

8 **A. Guilty Plea:** The defendant will plead guilty to the
9 two-count Indictment, which charges him with conspiracy to rig
10 bids, in violation of 15 U.S.C. § 1, and conspiracy to commit
11 mail fraud, in violation of 18 U.S.C. § 1349. The defendant
12 agrees that he is, in fact, guilty of those charges and that the
13 facts set forth in the Factual Basis attached hereto as Exhibit A
14 are true and accurate.

15
16 **B. Restitution:** The Mandatory Victim Restitution Act
17 requires the Court to order restitution to the victims of certain
18 offenses. Payment should be made at such times and in such
19 amounts as ordered by the Court and should be by cashier's or
20 certified check made payable to the Clerk of the Court. The
21 government and defendant agree to recommend that the Court order
22 defendant to pay restitution in the amount of approximately
23 \$614,982. The defendant understands that this Plea and
24 Cooperation Agreement is voidable by the government if he fails
25 to pay the restitution as ordered by the Court. Defendant
26 further agrees that he will not seek to discharge any restitution
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1 obligation or any part of such obligation in any bankruptcy
2 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.
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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 material 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.
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21 **E. Payment of Fine:** The defendant agrees that a criminal
22 fine of \$20,000 is appropriate, if so ordered by the Court. The
23 defendant understands that the criminal fine ordered by the Court
24 may be based upon the defendant's ability to pay a criminal fine
25 in 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 United
7 States Sentencing Guidelines ("Sentencing Guidelines" or
8 "U.S.S.G.") range for his offense, as determined by the Court.

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

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

16 **E. Other Government Action:** Even though this Agreement is
17 not binding on any other federal, state or local authorities,
18 the government agrees, if requested, to advise the appropriate
19 officials of any governmental agency not covered by this
20 agreement of the fact, manner, and extent of the defendant's
21 cooperation in this case so that they can take this information
22 into consideration before taking any action against the
23 defendant.
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1 IV.

2 **ELEMENTS OF THE OFFENSE**

3 Had this case gone to trial, the government would have to
4 prove beyond a reasonable doubt the following elements:

5 For Count One, Sherman Act:

6 First, that the defendant entered into a conspiracy;

7 Second, that the conspiracy was an unreasonable restraint of
8 trade; and
9

10 Third, that the conspiracy was in or affected interstate
11 commerce in the United States.

12 For Count Two, Conspiracy to Commit Mail Fraud:

13 First, that the defendant knowingly devised or participated
14 in a conspiracy to defraud or to obtain money or property by
15 means of materially false pretenses, representations, or
16 promises;
17

18 Second, the defendant knew that the scheme was deceptive or
19 that the pretenses, representations, or promises were false;

20 Third, that the defendant did so with the intent to defraud;
21 and
22

23 Fourth, for the purpose of carrying out the scheme or
24 attempting to do so, the defendant knowingly used and caused to
25 be used the United States mails or private or commercial carrier
26 in the manner charged.

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V.

MAXIMUM SENTENCE

A. Maximum Penalty: For Count One, the maximum sentence the Court can impose for a violation of 15 U.S.C. § 1 is ten years incarceration; a fine in an amount equal to the greatest of (1) \$1,000,000, (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; a three-year period of supervised release; and a special assessment of \$100. For Count Two, the maximum sentence the Court can impose for a violation of 18 U.S.C. § 1349 is 30 years incarceration; a fine of \$1,000,000; a five-year period of supervised release; and a special assessment of \$100.

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

VI.

SENTENCING DETERMINATION

A. Statutory Authority: The defendant understands that the Court must consult the Federal Sentencing Guidelines (as promulgated by the Sentencing Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United States v. Booker and

1 United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738 (2005)) and
2 must take them into account when determining a final sentence.
3 The defendant understands that the Court will determine a non-
4 binding and advisory Guideline sentencing range for this case
5 pursuant to the Sentencing Guidelines. The defendant further
6 understands that the Court will consider whether there is a basis
7 for departure from the Guideline sentencing range (either above
8 or below the Guidelines sentencing range) because there exists an
9 aggravating or mitigating circumstance of a kind, or to a degree,
10 not adequately taken into consideration by the Sentencing
11 Commission in formulating the Guidelines. The defendant further
12 understands that the Court, after consultation and consideration
13 of the Sentencing Guidelines, must impose a sentence that is
14 reasonable in light of the factors set forth in 18 U.S.C.
15 § 3553(a).
16
17

18 **B. Stipulations Affecting Guidelines Calculations:** The
19 government and the defendant agree that there is no material
20 dispute as to the following Sentencing Guidelines variables and
21 therefore stipulate and agree to the following:
22

23 For Count One:

24	\$2R1.1(a) Base Offense Level	12
25	(b) (1) Bid Rigging	+1
26	(b) (2) (B) Volume of Commerce > \$10 million	+4
27	Total	17
28	(c) (1) Fine 1 - 5% of \$12.4 million	

1 For Count Two:

2	§2B1.1(a) (1)	Base Offense Level	7
3	(b) (1) (D)	Loss > \$400,000	+14
4	(b) (2) (A) (i)	10 or more victims	+2
5		Total	23

6
7 The Guidelines calculation results in an offense level of 23 for
8 a jail term of 46 to 57 months and a Guidelines fine range, under
9 §5E1.2(c) (3), of \$10,000 to \$100,000.

10 **1. Aggravating Role in Offense:** Because the defendant
11 served as a manager or supervisor with respect to the criminal
12 activity charged, pursuant to §3B1.1(b), the defendant's offense
13 level is increased by 3 levels.

14
15 **2. Total Offense Level:** Pursuant to the foregoing
16 stipulations, defendant's total offense level is 26.

17 **3. Acceptance of Responsibility:** Pursuant to §3E1.1
18 and as described in more detail in paragraph III.B. above, the
19 defendant's total offense level is decreased by three levels
20 because of his acceptance of responsibility. The Adjusted Total
21 Offense Level is therefore 23.

22
23 **4. Criminal History:** The parties agree that the
24 defendant's criminal history is to be determined by the United
25 States Probation Office and the Court.

26 **5. Departures or Other Enhancements or Reductions:**
27 The parties stipulate and agree that they will not seek or argue
28 in support of any other specific offense characteristics, Chapter

1 Three adjustments, departures, or cross-references, other than
2 those contemplated in the foregoing stipulations. Defense
3 counsel may argue for a variance or deviation from the Sentencing
4 Guidelines under 18 U.S.C. § 3553(a), on any grounds, including
5 but not limited to 18 U.S.C. § 3553(a)(6), that the defendant
6 should receive a sentence that is no higher than defendants with
7 similar backgrounds who have engaged in similar conduct. The
8 government reserves its right to oppose such deviation or
9 variance. If either party breaches this provision, the other
10 party shall be relieved of all of its obligations under this Plea
11 and Cooperation Agreement.
12

13 VII.

14 WAIVERS

15
16 **A. Waiver of Constitutional Rights:** The defendant
17 understands that by pleading guilty he is waiving the following
18 constitutional rights: (a) to plead not guilty and to persist in
19 that plea if already made; (b) to be tried by a jury; (c) to be
20 assisted at trial by an attorney, who would be appointed if
21 necessary; (d) to subpoena witnesses to testify on his behalf;
22 (e) to confront and cross-examine witnesses against him; and
23 (f) not to be compelled to incriminate himself.
24

25 **B. Waiver of Appeal and Collateral Attack:** The defendant
26 understands that the law gives him a right to appeal his
27 conviction and sentence. He agrees as part of his plea, however,
28 to give up the right to appeal the conviction and the right to

1 appeal any aspect of the sentence imposed in this case, so long
2 as his sentence is no longer than the top of the Sentencing
3 Guidelines range determined by the Court, consistent with the
4 stipulations set forth above about the Sentencing Guidelines
5 variables.

6
7 Regardless of the sentence he receives, the defendant also
8 gives up any right he may have to bring a post-appeal attack on
9 his conviction or his sentence. He specifically agrees not to
10 file a motion under 28 U.S.C. § 2255 or § 2241 attacking his
11 conviction or sentence.

12 If the defendant ever attempts to vacate his plea, dismiss
13 the underlying charges, or reduce or set aside his sentence on
14 any of the counts to which he is pleading guilty, except for the
15 limited appeal right set forth above, the government shall have
16 the right to: (1) prosecute the defendant on any of the counts to
17 which he pleaded guilty; (2) reinstate any counts that may be
18 dismissed pursuant to this Plea and Cooperation Agreement; and
19 (3) file any new charges that would otherwise be barred by this
20 Plea and Cooperation Agreement. The decision to pursue any or
21 all of these options is solely in the discretion of the United
22 States Attorney's Office and the Department of Justice, Antitrust
23 Division. By signing this Plea and Cooperation Agreement, the
24 defendant agrees to waive any objections, motions, and defenses
25 he might have to the government's decision. In particular, he
26 agrees not to raise any objections based on the passage of time
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1 with respect to such counts, including, but not limited to, any
2 statutes of limitation or any objections based on the Speedy
3 Trial Act or the Speedy Trial Clause of the Sixth Amendment.

4 **C. Waiver of Attorneys' Fees and Costs:** The defendant
5 agrees to waive all rights under the "Hyde Amendment," Section
6 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or
7 other litigation expenses in connection with the investigation
8 and prosecution of all charges in the above-captioned matter and
9 of any related allegations.
10

11 **VIII.**

12 **ENTIRE PLEA AND COOPERATION AGREEMENT**

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

APPROVALS AND SIGNATURES

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

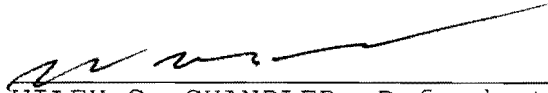
DATED: 2-6-12



Jeffrey L. Bornstein, Esq.
Attorney for Defendant

B. **Defendant:** I have carefully reviewed every part of this Plea and Cooperation Agreement with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea and Cooperation Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea and Cooperation Agreement. Finally, I am satisfied with the representation of my attorney in this case.

DATED: 2-2-12



WILEY C. CHANDLER, Defendant

1 **C. Attorneys for the Government:** The undersigned accept and
2 agree to this Plea and Cooperation Agreement on behalf of the
3 government.
4

5 DATED: 2/24/12
6

BENJAMIN B. WAGNER
United States Attorney

7 By: 
8

RUSSELL L. CARLBERG
Assistant U.S. Attorney

9
10
11 SHARIS A. POZEN
Acting Assistant Attorney
12 General

13
14 By: 
15

~~ANNA TRYON FLETCHER~~
TAI S. MILDER
Trial Attorneys
U.S. Department of Justice
Antitrust Division
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1 **EXHIBIT "A"**
2 **Factual Basis for Plea**

3 **Bid Rigging**

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

6 Beginning at least as early as in or about September 2008
7 and continuing until in or about October 2009 (relevant period),
8 defendant participated in a conspiracy to rig bids at nonjudicial
9 public real estate foreclosure auctions ("public auctions") in
10 San Joaquin County in the Eastern District of California. The
primary purpose of this conspiracy was to suppress and restrain
competition by rigging bids to obtain selected properties offered
at the public auctions.

11 During the relevant period, defendant and his coconspirators
12 agreed not to bid against one another to purchase selected
13 properties sold at public auctions. To carry out their
14 agreements, defendant and his coconspirators designated which
15 conspirator would bid for the selected properties at the public
16 auctions and, if they were not the designated bidder, refrained
from bidding on those properties. Defendant and his
coconspirators made payments to and received payments from one
another in return for refraining from bidding at the public
auctions.

17 During the relevant period, the business activities of the
18 defendant and coconspirators were within the flow of, and
19 substantially affected, interstate trade and commerce. For
20 example, mortgage holders located in states other than California
held mortgages, appointed trustees, and received proceeds from
the sale of properties subject to the conspiracy at the public
auctions.

21 **Conspiracy to Commit Mail Fraud**
22

23 Beginning in or about September 2008 and continuing until in
24 or about October 2009 (relevant period), defendant and his
25 coconspirators agreed to devise or participate in a scheme to
26 defraud mortgage holders and other holders of debt secured by the
27 property (collectively, "beneficiaries") or to obtain from
28 beneficiaries money or property by means of materially false
pretenses, representations, or promises. The primary purposes of
this conspiracy were to acquire title to selected properties sold
at public auctions in San Joaquin County in the Eastern District
of California at a lower price and to divert money to defendants
and coconspirators that should have gone to the beneficiaries.

1 The conspiracy to defraud consisted of an agreement among
2 defendant and his coconspirators to divert funds from the
3 beneficiaries to the defendants and coconspirators. Defendant
4 and his coconspirators arranged for a designated conspirator to
5 purchase selected properties at public auctions at lower,
6 noncompetitive prices. They made payments to and received
7 payments from one another using monies that would have gone to
8 beneficiaries. In some instances, they held private auctions,
9 frequently referred to as "rounds" or "round robins," open only
10 to members of the conspiracy, to bid for selected properties that
11 the designated conspirators purchased at the public auctions.
12 Based on an agreed-upon formula, they distributed among the
13 conspirators participating in the rounds the difference between
14 the highest bids submitted at the public auctions and the highest
15 bids submitted at the round robins. They allowed the
16 conspirators who submitted the highest bids at the round robins
17 to acquire title to the selected properties. Defendant and his
18 coconspirators took steps to conceal the fact that monies were
19 diverted from the beneficiaries to the conspirators, including
20 making and causing to be made false and misleading statements on
21 records of public auctions that trustees relied upon to
22 distribute proceeds from the public auction to the beneficiaries
23 and convey title to properties sold at the public auction.

24 The defendant and others, for the purpose of executing the
25 conspiracy described above and attempting to do so, knowingly
26 used and caused to be used the United States mails or private or
27 commercial carrier. For example, Trustee's Deeds Upon Sale and
28 related documents were sent to conspirators through the United
States mail and private or commercial interstate carriers.