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9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,

14  
15 v.

16 GREGORY CASORSO,

17 Defendant.  
18

CASE NO. CR 4:14-00580 PJH

**UNITED STATES' SENTENCING  
MEMORANDUM FOR DEFENDANT  
GREGORY CASORSO**

Court: Hon. Phyllis J. Hamilton  
Date: November 15, 2017  
Time: 2:30 p.m.  
Place: Courtroom 3, 3rd Floor

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## INTRODUCTION

1  
2 For nearly two years, defendant Casorso helped corrupt the Alameda foreclosure auctions and rig  
3 the system in his and his employer's favor. Casorso was not the originator of this bid-rigging conspiracy  
4 in Alameda County, or even a ringleader, but Casorso, perhaps more than any other participant, was a  
5 true believer in this conspiracy. His testimony at trial revealed that to this day, Casorso believes that the  
6 bid-rigging conspiracy was necessary and justified, going so far as to claim that it helped fund taxpayer  
7 bailouts of the banks. Casorso did not like the rules of the foreclosure business – even though it proved  
8 to be very lucrative for his employer – and therefore believed he was entitled to rig the system in his  
9 favor. In Casorso's mind, the victims of this conspiracy – the beneficiaries of the loans – deserved what  
10 they got. This sense of vigilante justice permeates his statements to the FBI and to Probation, an  
11 interview he gave to the press, and his testimony at trial. As such, Casorso has never taken  
12 responsibility for his conduct.

13 His deep devotion to the bid-rigging conspiracy is evident in his volume of commerce figures.  
14 In just under two years, Casorso helped rig nearly 400 homes. His total volume of commerce, reflecting  
15 the purchase price of the properties and payouts owed for each property purchased, is \$17,058,503.01.  
16 Casorso took his role in this conspiracy seriously and by his own admission used the conspiracy to gain  
17 an advantage at the auctions. For these reasons, the government recommends that the Court sentence  
18 Casorso to a term of custody of 34 months, a mid-range Guidelines sentence, and a fine of \$170,585.03,  
19 at the low end of the Guidelines range.

## PROCEDURAL HISTORY

20  
21 On November 19, 2014, a grand jury returned an indictment against Casorso, along with his  
22 employer Michael Marr and fellow employees Javier Sanchez and Victor Marr. Casorso was charged  
23 with one count of violating the Sherman Act, 15 U.S.C. § 1, as well as with mail fraud. The indictment  
24 alleged that Casorso participated in a conspiracy to rig bids at foreclosure sales in Alameda County  
25 beginning as early as June 2008 through January 2011. On September 8, 2016, the mail fraud counts  
26 were dismissed by motion of the government. Order Granting Revised Mot. to Dismiss (Dkt. 173).

27 //

28 //

1 Trial against Michael Marr, Sanchez, and Casorso began on May 15, 2017.<sup>1</sup> On June 2, 2017, the jury  
2 convicted all three defendants. Jury Verdict (Dkt. 291).

### 3 SUMMARY OF FACTS

4 The government concurs with the description of the bid-rigging conspiracy contained in the  
5 Presentence Report (PSR). This section summarizes the evidence of Casorso's role in the bid-rigging  
6 conspiracy.

#### 7 I. Casorso's Participation In The Bid-Rigging Conspiracy

8 From 2009 to 2011, Casorso personally rigged at least 397 properties on behalf of his employer,  
9 Community Fund, and its clients. *See* Declaration of Micah L. Rubbo ("Rubbo Decl.") ¶ 2; Exhibit A.  
10 Casorso was a fixture at the Alameda County trustee sales. He considered himself the lead  
11 representative from the Marr organization at the Alameda County trustee sales. Rubbo Decl. Ex. B  
12 (Trial Tr. 2246:2-5).

13 At trial, numerous witnesses described Casorso's participation and role in the conspiracy.  
14 Casorso was one of the first people the undercover agent ("UCE") met at the Alameda County trustee  
15 sales. Rubbo Decl. Ex. B (Trial Tr. 723:9-15). In fact, Casorso was involved in three of the five  
16 Alameda County deals in which the UCE participated. *Id.* at 597:1-2 (three deals with Casorso); 722  
17 (five deals total). One of those deals involved a property located at 24474 Margaret Drive in Hayward.  
18 During the public auction for that property, Casorso nodded at the UCE to indicate that he wanted to  
19 hold a round and that the UCE should stop bidding. *Id.* at 642:5-10. The UCE agreed. Later there was a  
20 round involving Casorso and one of Marr's other associates, his son Victor Marr. Ultimately, the UCE  
21 owed Casorso \$12,600 because of the round. *Id.* at 646:7-10. When that money became due, it was  
22 Casorso who collected the money from the UCE. *Id.* at 646:14-22, 647:24-648:8. On August 19, 2010,  
23 the UCE came to Marr's office and met with Casorso in a conference room to "settle up." The UCE  
24 recorded this meeting. Casorso made another deal with the UCE for a property on C Street in Oakland.  
25 *Id.* at 665:4-8. During the auction for C Street, Casorso agreed to stop bidding and let the UCE win the  
26 property at the public auction. In exchange, the UCE agreed to pay Casorso \$1,000. *Id.* at 666-667.

27 //

28 <sup>1</sup> Victor Marr's trial was severed. Pretrial Order No. 5 (Dkt. 247).

1 This was a straight payoff – in other words, the UCE agreed to pay Casorso to stop bidding against him  
2 at the public auction for a negotiated amount and there was no round.

3 The cooperating witnesses’ testimony also illustrates Casorso’s central role in the Alameda  
4 County conspiracy. Bradley Roemer testified that Casorso was the “most prevalent” participant in the  
5 agreements to stop bidding among Marr’s employees. Rubbo Decl. Ex. B (Trial. Tr. 1279:10-14).  
6 Roemer testified that he frequently observed Casorso organizing the agreements not to bid on behalf of  
7 the conspirators. *Id.* at 1281:6-19. Danli Liu, another competitor, recalled personally agreeing to stop  
8 bidding and holding a round with Casorso on multiple occasions. *Id.* at 1967:22-25.

9 The witness testimony is corroborated by the documents, many of which were written by  
10 Casorso himself. For example, Casorso had a regular practice of taking notes during the rounds.  
11 Wesley Barta, who worked with Casorso and implicated him in the Alameda County conspiracy,  
12 introduced a summary of those round sheets at trial. Rubbo Decl. Ex. B (Trial Tr. vol. 6, pp. 1451:2-6);  
13 Ex. C (Ex. 16). According to that summary, Casorso authored 52 roundsheets. Douglas Ditmer, Liu,  
14 and Roemer also introduced a number of round sheets, checks, and emails implicating Casorso.

15 **ARGUMENT**

16 **I. Guidelines Calculations**

17 **A. Defendant Casorso’s Guidelines Range Is 30 to 37 Months**

18 The government concurs with the Guidelines calculation in the PSR, except with respect to the  
19 two-point increase for obstruction of justice. Casorso’s total offense level should be 19, as calculated  
20 below:

21	i.	Base Offense Level (§2R1.1(a))	12
22	ii.	Submission of Noncompetitive Bids (§2R1.1(b)(1))	+1
23	iii.	Volume of Affected Commerce (§2R1.1(b)(2)(B))	+4
24	iv.	Acceptance of Responsibility (§3E1.1)	0
25	v.	<u>Obstruction and Related Adjustment (§3C1.1)</u>	<u>+2</u>
		<b>Total Offense Level</b>	<b>19</b>

26 An offense level of 19 results in a Guidelines range of 30 to 37 months for a defendant in  
27 Criminal History Category I.

28 //



1 Casorso advocates. The Guidelines clearly contemplate that even those acting at a superior's direction  
2 will have a volume of commerce, providing that volume of commerce "is the volume of commerce done  
3 by [the defendant] or his principal." U.S.S.G. §2R1.1(b)(2) (emphasis added).

4 If anything, under the Guidelines, Casorso's approximately \$17 million volume-of-commerce  
5 *undervalues* his role in the conspiracy. According to the Guidelines, "the volume of commerce  
6 attributable to an individual participant in a conspiracy is the volume of commerce done by him or his  
7 principal in goods or services that were affected by the violation." U.S.S.G. §2R1.1(b)(2). Therefore,  
8 Casorso's volume-of-commerce calculation only reflects the relatively fewer auctions in which he  
9 acquired a property, not any of the auctions where he received a payoff after losing the round. While  
10 Casorso purchased 97 properties through the bid-rigging conspiracies, he rigged an additional 300  
11 properties. Not one of those 300 properties is included in Casorso's volume of commerce. Moreover,  
12 even for those properties that were purchased on behalf of the Marr organization, the government only  
13 counted those instances where Casorso participated in the round – not all "commerce done by...his  
14 principal." There were occasions, however, where Casorso was involved in other parts of the  
15 transaction, for example bidding at the public auction or filling out a receipt of funds for a rigged  
16 property, but where another Marr representative was in the round. While the government believes these  
17 properties could be counted in Casorso's volume of commerce under §2R1.1(b)(2), it has not done so.  
18 For the foregoing reasons, the four-level volume-of-commerce adjustment is actually a conservative  
19 estimate of Casorso's true volume of affected commerce.

## 20 **2. No Adjustment for Acceptance of Responsibility Applies**

21 The government agrees with the PSR that Casorso is not entitled to any reduction for acceptance  
22 of responsibility under U.S.S.G. §3E1.1(a). PSR ¶ 46. A defendant may receive a two-level offense  
23 reduction if he "clearly demonstrates acceptance of responsibility for his offense." U.S.S.G. §3E1.1(a).  
24 In general, acceptance of responsibility credit is not available to a defendant who "puts the government  
25 to its burden of proof at trial." U.S.S.G. §3E1.1 comment. n.2.

26 //

27 //

28 //

1 Casorso's response to the PSR claims that he admitted to the bid rigging charge at trial and  
2 merely disputed whether the conduct was "unreasonable," and therefore he should receive acceptance  
3 credit. He should not. First, Casorso has never shown any contrition or remorse for the offense. *See*  
4 *United States v. Nielsen*, 371 F.3d 574, 582 (9th Cir. 2004) ("To receive the two-point downward  
5 adjustment, a defendant must at least show contrition or remorse."). In fact, in April 2015, long after the  
6 FBI's investigation became public, Casorso gave an interview with the *San Francisco Chronicle* where  
7 he justified the rounds, claiming they were "just good business deals." Rubbo Decl. Ex. D at pg. 3.  
8 Despite the findings of the article that the price of properties purchased by pleading codefendants was,  
9 on average, \$50,000 less than other homes purchased at the auction during that timeframe, Casorso went  
10 on to explain that the secondary auctions "stimulated bidding by creating a less risky environment for  
11 investors." *Id.* at 2, 3.

12 His "acceptance of responsibility" statement in the PSR shows that nothing has changed. While  
13 claiming to accept responsibility, he once again justifies his conduct:

14 The auctions put us in danger as there was incorrect information; and issues,  
15 litigations, liens, and occupancy information was not disclosed. While the  
16 information was known to the lenders, it was withheld from the bidders. We  
17 worked better as a group to protect ourselves and others, and it created a  
18 "safe" environment.

19 PSR ¶ 36. This statement does not show contrition. Quite the opposite. Defendant Casorso continues  
20 to believe that collusion was necessary and appropriate to combat the banks. He also continues to  
21 believe that his conduct helped, not harmed, competition:

22 Other bidders were jealous bid up the prices and had influence on other  
23 bidders to bid. The bidding did not actually suppress sales. It actually  
24 created a lot of bids that would not have taken place otherwise.

25 It was unpleasant to proposition other bidders but it was worth fighting for.  
26 The rounds increased the price paid by lenders and it was evident the rate  
27 went up rather than down. I had no knowledge of the per se rule in advance  
28 and did not restrain bids.

29 *Id.* In stark contrast to those defendants who have pleaded guilty and been sentenced by the Court,  
30 Casorso still refused to take responsibility for his conduct, even on the eve of sentencing – maintaining  
31 that bid rigging was "worth fighting for."

1 Even if Casorso were to express genuine remorse at sentencing, Comment 2 makes clear that the  
2 reduction is not intended to apply to a defendant who puts the government to its burden of proof at trial  
3 by denying factual elements of guilt, is convicted, and only then expresses remorse. Throughout trial  
4 and in closing arguments, Casorso did contest several factual elements of guilt. First, he contested  
5 whether the government proved the conspiracy charged in the indictment because the government failed  
6 to prove the defendants intended to suppress competition. In his closing argument, Casorso argued:

7 If you read the instructions, they have to prove the conspiracy charged in  
8 the indictment. And the conspiracy charged is in instruction 20, which you'll  
9 have with you. The conspiracy was to, quote, suppress competition by  
10 refraining from and stopping bidding against each other to purchase  
11 hundreds of selected properties at -- in Alameda and Contra Costa Counties.  
12 *The key word here is that they were trying to suppress competition. They  
have to prove that. They have to prove what our clients' intent was, what  
their purpose was, what they were trying to do. . . . If you think of the  
evidence, if you think of my client's testimony, is that what he was trying to  
do? I heard something quite to the contrary, . . . .*

13 Rubbo Decl. Ex. B (Trial Tr. 2427:7-25) (emphasis added). In essence, Casorso argued that government  
14 failed to prove that he knowingly joined the charged conspiracy because it didn't show he intended to  
15 suppress competition. A defendant who admits he committed the *actus reus* of the crime but claims he  
16 is not guilty because he lacks intent does not qualify for acceptance of responsibility. *United States v.*  
17 *Burrows*, 36 F.3d 875, 883 (9th Cir. 1994) (defendant's position "incompatible with acceptance of  
18 responsibility" where he "freely admitted committing the *actus reus* of the crime" but "maintained even  
19 after trial that he had a complete defense based on his purported lack of *mens rea*"). That Casorso  
20 lacked the necessary intent to convict was a persistent theme throughout his closing. *See* Rubbo Decl.  
21 Ex. B (Trial Tr. at 2426) ("My client was not trying to eliminate the competition. My client was trying  
22 to eliminate the risk. And *that is not bid-rigging.*"); *id.* at 2426:22-24 ("They have to prove my client  
23 was trying to eliminate the competition. They have to prove that beyond a reasonable doubt. They  
24 haven't done that"); *id.* at 2433:22-25 ("When they were agreeing to get into the round, were they  
25 agreeing to suppress competition? I don't think they've proven that here. There were real business,  
26 legitimate reasons to get into the rounds."); *id.* at 2440:8-15 ("Each of you has to . . . decide whether the  
27 government's proven this charge beyond a reasonable doubt; whether the government's proven beyond a  
28 //

1 reasonable doubt that my client conspired to eliminate competition when he was agreeing to get into  
2 rounds. I don't think they've proven that.”).

3 Defendant Casorso also contested whether the conspiracy existed in the flow of interstate  
4 commerce. In closing he claimed that the government had not shown that “any of this money that these  
5 round payments between our clients and some of the other people out there ever crossed state lines.”  
6 Rubbo Decl. Ex. B (Trial Tr. at 2439:21-2440:1).

7 The majority of the factors guiding the application of the adjustment for acceptance of  
8 responsibility weigh against giving Casorso receiving any such adjustment. Casorso did not voluntarily  
9 terminate or withdraw from the conspiracy (§3E1.1, comment. (n.1(B)), make voluntary payment of  
10 restitution (C), voluntarily resign from any office or position held during the offense (F), or timely  
11 manifest any acceptance of responsibility (H).

12 In sum, Casorso is ineligible for a downward adjustment under §3E1.1. He has not expressed  
13 any type of remorse or contrition and contested factual elements of guilt at trial. Under the Guidelines,  
14 it is a “rare situation” where a defendant clearly demonstrates acceptance of responsibility despite going  
15 to trial. U.S.S.G. §3E1.1 comment. n.2. This is not one of those rare situations. No adjustment for  
16 acceptance of responsibility should apply.

17 **3. Casorso Should Receive an Upward Adjustment for Obstruction under**  
18 **§3C1.1**

19 Defendant Casorso should also receive an upward adjustment for obstruction. Where a  
20 defendant chooses to take the stand at trial and commits perjury, a two-level increase for obstruction is  
21 warranted. U.S.S.G. §3C1.1 and Application Note 4(B). The right to testify does not include the right  
22 to commit perjury. *United States v. Dunnigan*, 507 U.S. 87, 96-98 (1993). A court applying the  
23 obstruction enhancement based on perjury must expressly find that “(1) the defendant gave false  
24 testimony, (2) on a material matter, (3) with willful intent.” *United States v. Castro-Ponce*, 770 F.3d  
25 819, 822 (9th Cir. 2014).

26 Each of those elements is satisfied here. Casorso gave false testimony at several points in his  
27 examination, all regarding the purpose of the conspiracy. A central part of Casorso’s defense was that  
28 the purpose behind rounds, indeed behind the agreement at the public auction, was legitimate.

1 According to Casorso, the purpose of the rounds was to gain information, time, and flexibility. Rubbo  
2 Decl. Ex. B (Trial Tr. at 2433:4-7, 2436:6-12, 2437:4-11). The purpose was not to make money.  
3 Evidence of hundreds of thousands of dollars exchanged between coconspirators therefore presented a  
4 problem. Casorso's solution was to attempt to distance himself from the money. He did so in two ways.  
5 First, Casorso testified that the money exchanged between competitors was not a *quid pro quo* for the  
6 agreement to stop bidding at the public auction. Second, he claimed he was not personally involved  
7 with collecting money. Both contentions were proven untrue.

8 a) Agreeing to Stop Bidding In Exchange for Money

9 In the first few minutes of his direct examination, Casorso testified as follows:

10 Q. Did you ever pay anyone not to bid against you?

11 A. I did not.

12 Q. Did you ever get paid not to bid against anybody?

13 A. I never received any money for not bidding.

14 Rubbo Decl. Ex. B (Trial Tr. at 2155:5-8). This was untrue. The bid-rigging conspiracy Casorso was  
15 charged and convicted of at trial consisted of an agreement to stop bidding *in exchange* for a monetary  
16 payoff. The witnesses were clear: the money paid pursuant to the bid-rigging agreement was in  
17 exchange for agreeing not to bid. Rubbo Decl. Ex. B (Trial Tr. at 583:19-22; 587:20-588:4) (UCE); *id.*  
18 at 1290:10-21 (Roemer); *id.* at 1481:6-12 (Barta). In fact, Casorso himself admitted as much in his  
19 April 2015 interview with the *San Francisco Chronicle*. According to that article, Casorso said,  
20 referring to rounds, “[e]veryone made money and everyone came back the next day and did it all over  
21 again.” Rubbo Decl. Ex. D at 3.

22 The money was at the heart of this conspiracy. And contrary to his testimony on direct, the  
23 evidence clearly showed that Gregory Casorso, just like the others, made and received payoffs for  
24 agreeing not to bid. During cross examination, the government confronted Casorso on this point. In  
25 particular, the government asked him about the part of the conspiracy involving the negotiated payoff  
26 deals. Casorso called these arrangements offers “that goes both ways.” At first, Casorso let slip the true  
27 nature of these agreements:

28 Q. During the public auction, you sometimes made offers to other  
bidders that go both ways, right?

1 A. Yes.

2 Q. You know what that expression means, right?

3 A. I do.

4 Q. And it means that either you will take the property *and pay the other bidder to stop bidding*, right?

5 A. Yes.

6 Q. Or they will take the property and *pay you to stop bidding*, right?

7 A. Correct.

8 Rubbo Decl. Ex. B (Trial Tr. vol. 10, pp. 2278:9-19) (emphasis added). However, Casorso quickly realized what he said and tried to walk it back:

9 A. Wait, wait, wait, wait, wait, wait. Could -- I'm sorry. Could you please repeat that question? I think I answered in haste.

10 Q. Sure. So the expression "an offer that goes both ways" means that either you will take the property and pay the other bidder a certain amount to stop bidding, right?

11 A. No. The offer to go both ways is not made during the course of the public bidding -- well, rarely.

12  
13 *Id.* at 2278:21-2279:4. But, by reverting back to his original false narrative, he provided testimony inconsistent with what he told the FBI in February of 2011. When confronted with his prior statements to the FBI, Casorso then had to admit the truth; agreements to stop bidding were in fact *in exchange* for money:

14  
15  
16  
17 Q. Okay. So during the public auction you'd make an offer that goes both ways, right?

18 A. An offer would be made -- could be made, yes.

19 Q. Okay. And that offer was to stop bidding *in exchange* for money, right?

20 A. *That's part of it, yes.*

21 Q. Okay. And when you say it would go both ways, that also means that *you would stop bidding in exchange for money*, right?

22 A. *Yes, that's what the offer means, yes.*

23 *Id.* at 2281:17-2282:1 (emphasis added). This testimony is wholly inconsistent with the story Casorso told during his direct examination when he said, unequivocally, that he never paid or received money in exchange for agreeing not to bid. Casorso's direct testimony was perjury. It does not matter that he ultimately admitted the truth. *See United States v. Norris*, 300 U.S. 564, 574 (1937) ("Deliberate material falsification under oath constitutes the crime of perjury and the crime is complete when a witness' statement has once been made.").



1 CASORSO: Okay, so this *settles everything up* for Margaret.  
UCE: Margaret right.  
2 CASORSO: Okay, and then uh, what, you, you're saying there's another,  
UCE: Eh.  
3 CASORSO: Yesterday there was a thousand,  
UCE: Right, and so they're saying, now I talked with Juan, and  
4 Juan said that this is back in January, there was like two old  
5 rounds or something I, I, that, there was deals, uh, I don't  
6 know if they made 'em with you or, what, what is that,  
CASORSO: Okay, just bring me the address.  
UCE: Yeah, right.  
7 CASORSO: The date.  
UCE: Right.  
8 CASORSO: And the amount,  
UCE: Yeah.  
9 CASORSO: Whether we owe it to you...  
UCE: Yeah.  
10 CASORSO: ... or you owe it to us.  
UCE: And I think they kept, they had the old round sheets or  
11 something like that so,  
CASORSO: Yeah. Cause we're, *we're settled on* Margaret.  
UCE: Right.  
12 CASORSO: Okay?  
UCE: We're good. So this is twelve six.

15 Rubbo Decl. Ex. C (Exhibit 106T) (emphasis added)). When reminded that he was caught on tape  
16 meeting with competitors to settle round debt, Casorso began to mince words:

17 Q. Mr. Casorso, do you remember hearing a recording of yourself in a  
18 conference room with the undercover agent --  
A. Yes.  
19 Q. -- Mr. David Lewis?  
A. I do. I simply was there and received the money.  
20 Q. Okay. So you were there to settle up for a round, right, on Margaret  
21 Street?  
A. It depends what you mean by "settle up."  
22 Q. You were there to receive money from Mr. Lewis for rounds, right?  
A. I was in the office when Mr. Lewis came. I was informed that he  
23 was coming. I was informed what he was going to do. I met him. I  
24 received the money. I accounted for it. I discussed the property. And  
25 I turned it all over to Mr. Sanchez.

26 Rubbo Decl. Ex. B (Trial Tr. at 2272:18-2273:7). Casorso attempted to explain away his earlier  
27 testimony by quibbling with the term "settle up." But as Exhibit 106T, excerpted above, shows it was  
28 Casorso who used that term during the meeting. In fact, he used the word "settle" three times. Rubbo

1 Decl. Ex. C (Exhibit 106T) (“Did that uh settle us up?”; “Okay, so this settles everything up for  
2 Margaret.”; “Yeah. Cause we’re, we’re settled on Margaret.”).

3 Moreover, Casorso’s testimony at trial implied that he just happened to be present when the UCE  
4 came to settle up for Margaret. That is also untrue. As the UCE testified:

5 Q. How was the meeting arranged?

6 A. I had seen Mr. Casorso at the courthouse during a public auction and  
said I was ready to pay him, and he suggested we meet at the office.

7 Rubbo Decl. Ex. B (Trial Tr. at 646:23-647:1). Nor is it plausible that this settlement meeting was just a  
8 one-time occurrence. The transcript from the audio/video recording shows that Casorso was not  
9 unaccustomed to settlement meetings. In fact, Casorso provides detailed instructions to the UCE on  
10 how to go about settling up for any future debt:

11 CASORSO: Okay, just bring me the address.

12 UCE: Yeah, right.

13 CASORSO: The date.

14 UCE: Right.

15 CASORSO: And the amount,

16 UCE: Yeah.

17 CASORSO: Whether we owe it to you...

18 UCE: Yeah.

19 CASORSO: ... or you owe it to us.

20 Rubbo Decl. Ex. C (Exhibit 106T). In short, Casorso’s testimony regarding whether he met to settle up  
21 round debt, even when given every possible benefit of the doubt, was undeniably false.

22 Testimony regarding whether he received money for agreeing not to bid was material because it  
23 went to the very heart of Casorso’s defense. Casorso argued the purpose behind the conspiracy was  
24 legitimate and that his client lacked the intent to suppress competition. *See, e.g.*, Rubbo Decl. Ex. B  
25 (Trial Tr. at 2433:22-25; 2437:4-11). Therefore, Casorso attempted to distance himself from at least two  
26 features of the conspiracy: (1) that he and other members of the conspiracy paid each other for  
27 agreements to stop bidding and (2) that the rounds and agreements enabled participants to make money.

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1 *Id.* at 437:22-438:10 (claiming in opening statement that purpose of agreements was to conserve  
 2 cashier's checks); 2437:4-11 (same argument in closing). But in order to do so, Casorso gave false  
 3 testimony. This was strategic<sup>3</sup> and it was obstruction.

4 Rarely can perjury be proven with the defendant's own words caught on tape. Here it can. Our  
 5 judicial system is built on the notion that a witness will in fact tell the truth having been sworn to do so  
 6 in a court of law. For that system to work, there must be consequences when it can be shown that a  
 7 witnesses has not done so. The Court has previously noted that a testifying defendant should be allowed  
 8 to "put the best spin possible on his or her view of the evidence." Rubbo Decl. Ex. E (*United States v.*  
 9 *Thomas Joyce, CR-14-0607*, Transcript of Proceedings, June 7, 2017 at 22:21-23). Even so, at some  
 10 point a line is crossed and spin turns to fiction. That line was crossed here. Casorso should receive two  
 11 points for obstruction under §3C1.1.

12 **B. Casorso's Fine Range is \$170,585 to \$852,925**

13 Under Section 2R1.1(c)(1), the fine for an individual convicted of an antitrust offense is one to  
 14 five percent of the volume of commerce. Here, Casorso's fine range is \$170,585.03 to \$852,925.15, as  
 15 calculated in the PSR. According to the Guidelines background, "The Commission believes that most  
 16 antitrust defendants have the resources and earning capacity to pay the fines called for by this guideline,  
 17 at least over time on an installment basis." U.S.S.G. §2R1.1, comment. (backg'd). The Guidelines  
 18 further state, "Substantial fines are an essential part of the sentence." *Id.* The PSR found that Casorso  
 19 did not have the financial means to pay the fine. Should the Court also decide that Casorso lacks the  
 20 ability to pay the guidelines fine, the government requests that the Court order the defendant to perform  
 21 an "equally burdensome" amount of community service, as the Sentencing Guidelines advise. U.S.S.G.  
 22 §2R1.1, Application Note 2. Applying the \$100 per hour rate that Judge Donato used to order

23 //

24 \_\_\_\_\_  
 25 <sup>3</sup> Whether round money was paid in exchange for agreeing not to bid is also a key part of  
 26 defendant's argument that the agreements were not *per se* illegal. This is further proof that the  
 27 testimony was strategically false. Prior to trial, Casorso had no problem admitting the *quid pro* nature of  
 28 the payoff money. *See* Rubbo Decl. ¶ 5 (Interview with the FBI) ("Also during the auction Marr can  
 have Casorso ask McKinzie [for example] or McKinzie can ask Marr through Casorso to 'make an offer  
 that goes both ways.' This means either McKinzie or Marr will state an amount that both are willing to  
 take to stop bidding, or pay to have the other stop bidding."); Ex. D at 3 (Interview with the San  
 Francisco Chronicle) ("Everyone made money and everyone came back the next day to do it all over  
 again.").

1 community service in *United States v. Florida* (for Robert Rasheed and John Berry) would result in  
2 1,705 to 8,529 hours of community service.

## 3 **II. Sentencing Recommendation**

4 Based on Casorso's refusal to accept responsibility or show remorse, his obstruction of justice,  
5 and the significant volume of commerce affected by this conspiracy, the Guidelines suggest a custodial  
6 sentence of 30 to 37 months. The factors under 18 U.S.C. § 3553(a) do not support any departure or  
7 variance below the Guidelines sentence. Rather, these factors and the Guidelines commentary support a  
8 34-month sentence, at the midpoint of the range. The most compelling factors weighing in favor of the  
9 proposed term of imprisonment are the need for the sentence to reflect the seriousness of the offense,  
10 afford adequate deterrence, and avoid an unwarranted sentencing disparity. *See* 18 U.S.C. § 3553(a)(2).

### 11 **A. The Government's Proposed Sentence Reflects The Seriousness Of The Offense, 12 Promotes Respect For The Law, And Provides Just Punishment**

13 Casorso stands out in this investigation for his steadfast defiance of the law. After dozens of  
14 prosecutions and guilty pleas and multiple convictions at trial, including his own, Casorso continues to  
15 maintain that his conduct was legitimate, necessary, and perfectly legal. His statement to the FBI, his  
16 interview with the press, his trial testimony, and even his statement to Probation make clear that Casorso  
17 believes he had a right to rig the system in his favor. Casorso was passionate about this in his trial  
18 testimony, at one point directly blaming the victims in this case:

19 [T]he person selling the property really doesn't tell us what's being sold.  
20 They have all of the information. They control every aspect of the auction,  
21 and that information is withheld from us bidders until the very last minute.  
22 Then what little information is provided is deceptive or incomplete. And  
23 then they bid against us. So it's not a true auction in that sense. *It's very  
24 deceptive, in my opinion, extremely dangerous and troubles me deeply that  
25 these institutions put us in danger.*

26 Rubbo Decl. Ex. B (Trial Tr. at 2160: 8-17) (later stricken from the record) (emphasis added). Casorso  
27 is clear, the conspirators were the victims in all of this. Not the other way around. At one point during  
28 his trial testimony, Casorso even tried to justify the legitimacy of the thousands of dollars in payoffs  
exchanged between coconspirators:

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1 Q. The round money didn't go to the trustee, did it?

A. Not directly, no.

2 Q. It didn't go to the trustee at all, Mr. Casorso, did it?

3 A. As I say, not directly, no.

Q. It didn't indirectly go to the trustee?

4 A. It absolutely went indirectly. All these banks were bailed out by the taxpayers and all of this is taxpayer money. So I dispute that.

5 . . .

6 Q. So your -- you believe that this was taxes -- this income was reported in taxes?

7 A. It's taxable income, yes.

8 Q. That wasn't my question. My question was whether or not you believe that this money was reported in taxes?

9 . . .

10 A. I have no idea.

11 Rubbo Decl. Ex. B (Trial. Tr. at 2302:23-2304:3.). Even his "acceptance statement" to Probation, places  
12 blame for his bid rigging elsewhere: "the auctions put us in danger as there was incorrect information;  
13 and issues, litigations, liens and occupancy information was not disclosed. While the information was  
14 known to the lenders, it was withheld from the bidders." PSR ¶ 36. Casorso ignores that that the  
15 foreclosure rules are known in advance – set out by the California legislature, in fact<sup>4</sup> and that the  
16 defendants chose this line of business – a line of business that proved to be quite profitable<sup>5</sup> – knowing  
17 the risks involved. His rationalization is akin to claiming cheating is justified whenever you do not like  
18 the rules of the game.

19 Casorso even took his defiance of the law public. He told the *San Francisco Chronicle*  
20 newspaper that when first learned of the investigation he was "stunned," adding "I mean, you don't have  
21 anything better to do?" Rubbo Decl. Ex. D at 3. In that same interview, Casorso went on to claim that  
22 the bid rigging would resume "once the FBI investigation blows over, 'because it's just too dangerous to  
23 be buying these properties this way.'" *Id.* at 4. At trial, he continued that theme telling the jury that he  
24 was not honest with the FBI when they first approached him about the investigation because he was

25 //

26 <sup>4</sup> PSR ¶ 11.

27 <sup>5</sup> During cross examination for example, Casorso authenticated documents which showed that  
28 for one rigged property – 63 Duarte in Fremont – just two weeks after the public auction Casorso, who was the listing agent for that property, had an offer to buy the property for \$131,000 more than he paid at the public auction. Rubbo Decl. Ex. B (Trial Tr. at 2245:15-19).

1 “angry that they were protecting the banks.” Rubbo Decl. Ex. B (Trial Tr. 2211: 7-14) (later stricken  
2 from the record).

3 The government recommends a custodial sentence at the mid-point in the guidelines because  
4 Casorso was an avid and devoted participant in this conspiracy who refuses to take responsibility for his  
5 actions. He was personally responsible for rigging the bidding for nearly 400 foreclosed houses and  
6 worked for an organization that rigged hundreds more. And yet, Casorso has demonstrated over and  
7 over that he does not respect the illegality of bid rigging. His statements go so far as to suggest that he  
8 thinks it would be justified for members of the conspiracy to resume their crime in the future.

9 A mid-range sentence is also warranted for Casorso because, as discussed above, he was even  
10 willing to mislead the jury in order to convince them the bid-rigging was justified. While the testimony  
11 outlined in section I.A.3 above was the most egregious, it was not the only time Casorso provided  
12 misleading or evasive testimony. As noted above, to support Casorso’s claim that rounds had a  
13 legitimate purpose, he argued that rounds gave him the ability to stretch his cashiers’ checks across  
14 multiple auctions because he did not have to give his cashiers’ checks to the auctioneer right away. *See*  
15 Rubbo Decl. Ex. B (Trial Tr. at 437:22-438:10) (opening statement); *id.* at 2437:4-11 (closing  
16 statement). In support of this argument, Casorso argued that he and Marr were short on money. *Id.* at  
17 2171:22-2172:5. But the evidence introduced showed that Casorso frequently qualified with over a  
18 million dollars in cashiers’ checks – far more than was necessary to purchase the property,  
19 demonstrating that Marr (who was capable of buying several properties a day) did not, in fact, have a  
20 cash shortage. On cross examination, the government confronted Casorso about these bid logs, starting  
21 first with Exhibit 1030 which showed Casorso qualifying with 1.6 million dollars. Rubbo Decl. Ex. C  
22 (Exhibit 1030). At first, Casorso tried to explain away the document, claiming that perhaps there was a  
23 misplaced decimal point. Rubbo Decl. Ex. B (Trial Tr.at 2291:9-19). But moments later, he changed  
24 his story. It was no longer a mistake having to do with a decimal point; now Casorso claimed he lied to  
25 the auctioneer about having 1.6 million dollars:

26 Q. Okay. So in this situation, assuming that's 1.6, you had way more --  
27 you qualified with way more than the opening bid; is that right?

28 A. No. I simply told the auctioneer I had 1.6. Whether I had it or not,  
he never checked.

1 Q. I'm sorry. You have to qualify with the auctioneer, right?

2 A. Yes. But we were regulars so much that they didn't check our  
checks.

3 Q. So you told the auctioneer that you had \$1.6 million, but you didn't  
4 have \$1.6 million?

4 A. That's more -- that is most likely what occurred, yes.

5 Q. Why did you --

6 A. The only thing that was important was that if I were the winning  
bidder, I had the cashier's checks to purchase the property.

7 Q. So your testimony is that you would tell the auctioneer something  
8 that wasn't true in order to qualify for the bid?

8 A. It's not that it's not true. I had enough money to qualify.

9 Q. Okay. Well, you told the auctioneer that you had \$1.6 million, right?

10 A. As I say, that -- this -- what I've just said is accurate.

10 Q. So you told the auctioneer that you had \$1.6 million?

11 A. And I may or may not have had 1.6. It would be very unusual for  
me to carrying that much money in those days.

12 Q. So your testimony is that you may have told them something that  
13 wasn't true?

14 A. My testimony is that I told the auctioneer I had enough money to  
15 buy the property should I be the winning bidder and I had enough to  
qualify.

16 Q. So where did the -- so the auctioneer just made up the 1.6 that is on  
this? How -- where did the auctioneer get the 1.6?

17 A. I probably told him.

18 *Id.* at 2292:14-2293:22. This testimony highlights the lengths Casorso was willing to go in order to  
19 protect his fiction that the rounds were legitimate. First, he tried to inject ambiguity into the bid logs by  
20 claiming that the auctioneer simply inserted a wayward decimal point. When he felt that wasn't  
21 working, he claimed that yes, the document says he has a million dollars, but that was because he lied to  
22 the auctioneer. This second explanation is also inconsistent because Casorso maintained that he had  
23 sufficient funds to cover his bid. Therefore, there would be no need for him to lie about a qualifying  
24 amount. On redirect examination, Casorso then claimed that he wanted to give the impression that he  
25 had a lot of money to attract outside clients (*id.* at 2326:19-2327:6). However, this explanation also fails  
26 under closer scrutiny because the amount each bidder qualifies with is not announced to the public.

27 Throughout his testimony, Casorso bobbed and weaved trying to find a way to explain away the  
28 evidence while still keeping his story intact. The end result is testimony that is evasive and strains

1 credibility. In the end, we may never know whether Casorso lied to jury about how much money he  
2 carried at the foreclosure auctions or whether he lied to the auctioneer about how much money he had at  
3 the auctions to qualify. But what is clear from the testimony, is that Casorso was willing to change his  
4 story, and bend the truth, to provide whatever explanation served his purposes in the moment. This  
5 makes his conduct even more deserving of punishment, further discounts any claim he has to leniency  
6 based on purported acceptance of responsibility, and increases the need for a longer custodial sentence  
7 to deter him from future dishonest and illegal conduct.

8 Finally, a 34-month sentence is also necessary because the use of volume of commerce to  
9 calculate sentences for bid rigging results in an “understatement of seriousness” in bid-rigging cases.  
10 U.S.S.G. §2R1.1 comment. (n.6), comment. (backg’d.) (“The Commission believes that the volume of  
11 commerce is liable to be an understated measure of seriousness in some bid-rigging cases.”). Casorso’s  
12 volume of commerce reflects only the fraction of the properties he personally rigged (97 out of 397); it  
13 does not include any of the hundreds of properties where Casorso demanded payoffs or got paid to walk  
14 away from the property. The Commission recommends that “[t]he court should consider sentences near  
15 the top of the guideline range” in bid-rigging cases. *Id.* comment. (n.6). Here, the government only asks  
16 that the Court give Casorso a sentence in the middle of the range.

### 17 **1. The Proposed Sentence Affords Adequate Deterrence**

18 An important consideration for the Court is whether the punishment will adequately deter future  
19 violations of the antitrust laws and white collar crime generally. *See* 18 U.S.C. § 3553(a)(2)(B) (courts  
20 should consider “adequate deterrence to criminal conduct” in selecting a sentence). The background to  
21 the applicable Guidelines explains the Commission’s intent that individuals who rig auctions should  
22 ordinarily go to prison:

23 [P]rison terms for these offenders should be much more common, and  
24 usually somewhat longer, than typical under pre-guidelines practice.  
25 Absent adjustments, the guidelines require some period of confinement in  
26 the great majority of cases that are prosecuted, including all bid-rigging  
cases . . . in very few cases will the guidelines not require that some  
confinement be imposed.

27 *Id.* §2R.1.1 comment. (backg’d).

28 //

1 Casorso's reported belief that the conduct will (and should) continue once the investigation  
2 blows over, is further justification for a mid-range sentence. Casorso should be held responsible for  
3 unapologetically rigging the foreclosure auctions in his favor and depriving the beneficiaries and the  
4 public of the benefits of a competitive process. The proposed sentence of 34 months will provide the  
5 necessary counterbalance to Casorso's open and public defiance of the antitrust laws.

## 6 **2. The Proposed Sentence Avoids Unwarranted Sentencing Disparities**

7 Section 3553(a)(6) directs the Court to consider "the need to avoid unwarranted sentence  
8 disparities among defendants with similar records who have been found guilty of similar conduct." 18  
9 U.S.C. § 3553(a)(6). A 34-month sentence is appropriate in order to avoid unwarranted sentencing  
10 disparities with other defendants the Court has recently sentenced. For example, Glenn Guillory and  
11 Tomas Joyce were both recently given low end Guideline sentences. Guillory and Joyce were,  
12 comparatively speaking, far less culpable. They participated in the conspiracy far less frequently and  
13 rigged a fraction of the properties Casorso did. A sentence in the mid-range of the guidelines, rather  
14 than the low end, would reflect these differences and help avoid sentencing disparities.

## 15 **3. No Downward Variance Is Warranted**

16 Casorso should not receive a downward variance. While he may have little criminal history, this  
17 is a trait shared by most antitrust defendants (including defendants sentenced to the Guidelines in this  
18 case) and is already accounted for by the criminal history calculation. This provides no reason to vary  
19 downward because the antitrust Guideline accounts for such a typical offender. *See United States v.*  
20 *Carter*, 560 F.3d 1107, 1121-22 (9th Cir. 2009). Casorso may argue that he did not intend to suppress  
21 competition or harm competition and that therefore a downward variance is warranted. That fact, even  
22 if true, would not entitle him to a variance. But it is not true. To give just one example, during  
23 Casorso's cross examination he testified that the conspirators were supposed to bid in small increments  
24 at the public auction so as not to destroy the value of the property for the conspirators in the round:

25 Q. And so isn't it true that you told the FBI if someone bids up a  
26 property in large increments, they will not be allowed to bid in a  
round?

27 A. If someone who wants to be in the round -- let's say we've bid up  
28 all of the other civilians, we've bid up all the other people who are  
not working the round, and now it's down to the people we're  
trying to decide who's going to put their checks at risk, if that

1 person at that time were to bid like 5- or 10- or \$20,000 at a pop,  
2 that person would not be in the round *because you're destroying*  
3 *the value for the rest of us*. However, if we're not doing a round  
4 and someone wants to bid 10- or 20- or 50,000 or 100,000 at a pop,  
5 it's perfectly normal. So it's only at a certain point in time when  
6 we're trying to set up the round where you don't destroy the value  
7 by bidding in higher increments.

8 Q. And when you say that you don't destroy the value by bidding in  
9 higher increments, you mean the value in the round, right? How  
10 much the property can be purchased for in the round?

11 A. No. You're increasing the danger. The higher the price goes up, the  
12 more danger of loss there is, the greater the risk. The greater the  
13 risk that there will be no round, the greater the risk that there will  
14 be no profit.

15 Q. So the higher you bid at the public auction, *the greater the risk that*  
16 *you won't be able to profit from that property* after you buy it in  
17 the round, right?

18 A. *That is true, yes.*

19 Q. And so you didn't want people who were making large bids at the  
20 public auction to be in the round, right?

21 A. Not if they wanted to be in the round, that is correct.

22 Rubbo Decl. Ex. B (Trial Tr. 2254:2-2255:6) (emphasis added). In other words, Casorso testified that  
23 his goal was to keep the price paid at the *public auction* down so that any value in the property went to  
24 the conspirators either through resale or through payoffs. Although Casorso attempts to justify his  
25 conduct by claiming it was necessary to counteract an imbalanced system, this testimony makes clear  
26 that he had another thing in mind as well: money. And he collected that money at the expense of the  
27 rightful beneficiaries of hundreds of foreclosure auctions.

28 The government agrees with Probation that there are no factors that would warrant a sentence  
outside the applicable advisory guidelines range. PSR ¶ 98.

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**CONCLUSION**

The United States respectfully requests that this Court sentence Casorso to 34 months in prison, three years of supervised release, a fine of \$170,585.03, and a \$100 special assessment.

DATED: November 8, 2017

Respectfully submitted,

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