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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 JAVIER SANCHEZ,

17 Defendant.  
18

CASE NO. CR 4:14-00580 PJH

**UNITED STATES' SENTENCING  
MEMORANDUM FOR DEFENDANT  
JAVIER SANCHEZ**

Court: Hon. Phyllis J. Hamilton

Date: November 8, 2017

Time: 2:30 p.m.

Place: Courtroom 3, 3rd Floor

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## INTRODUCTION

1  
2 Javier Sanchez rose through the ranks of Community Fund to become Michael Marr's right-hand  
3 man. At the courthouse steps, he organized bid-rigging agreements and rounds in two counties for more  
4 than two years and participated in over 400 acts of bid rigging. He was also talented at valuing  
5 properties and he put this quantitative prowess to work, managing the finances of the conspiracies for  
6 Community Fund, the largest player in the conspiracy. Among the many employees Michael Marr sent  
7 to the auctions to rig bids, Sanchez was the only one he trusted with this task. The recordkeeping  
8 function Sanchez led gave Community Fund a strategic edge because it had the most detailed accounting  
9 of the debts members of the conspiracy owed, tracking thousands of transactions as no other participants  
10 did. Sanchez enabled Community Fund to play a dominant role in the bid rigging across two counties,  
11 deciding who should pay how much and when, bringing in new bidders, and ensuring a steady stream of  
12 agreements took place. The result: pervasive corruption of the foreclosure auctions in Alameda County  
13 and Contra Costa County during the depths of the financial crisis.

14 Because of the unique and central role he played for Community Fund – and Community Fund's  
15 powerful role in the conspiracies – the government recommends that the Court sentence Sanchez to a  
16 mid-range custodial sentence of 37 months. The government further recommends the Court order  
17 Sanchez to pay a low-end fine of \$207,259.93, no restitution, and a \$200 special assessment.

## PROCEDURAL HISTORY

18  
19 On November 19, 2014, a grand jury returned an indictment against Javier Sanchez, along with  
20 Michael Marr, Gregory Casorso, and Victor Marr. Sanchez was charged with two counts of violating  
21 the Sherman Act, 15 U.S.C. § 1, as well as with mail fraud. The indictment alleged that Sanchez  
22 participated in conspiracies to rig bids at foreclosure sales in Alameda and Contra Costa counties  
23 beginning as early as June 2008 through January 2011. On September 8, 2016, the mail fraud counts  
24 were dismissed by motion of the government. Order Granting Revised Mot. to Dismiss (Dkt. 173).  
25 Victor Marr's trial was later severed. Pretrial Order No. 5 (Dkt. 247).

26 Trial against Sanchez, Michael Marr, and Casorso began on May 15, 2017. On June 2, 2017, the  
27 jury convicted all three defendants on all counts. Jury Verdict (Dkt. 291).

28 //

## SUMMARY OF FACTS

1  
2 The government concurs with the description of the bid-rigging conspiracy contained in the  
3 Presentence Report (PSR). This section summarizes the evidence of Sanchez's role in the bid-rigging  
4 conspiracies.

### I. Employment with Michael Marr

5  
6 Sanchez, currently 31 years old, began working for Marr as a teenager. (Loeb Decl. Ex. A (Trial  
7 Tr. 2270:1-5)). His mother, Martha Sanchez, was Marr's girlfriend. PSR ¶ 21. He moved up in the  
8 organization, showing particular talent for valuing properties. Loeb Decl. Ex. A (Trial Tr. at 2270:6-10;  
9 2223:14-22).

10 Marr operated various business entities relating to real estate in the course of participating in the  
11 Alameda and Contra Costa County bid-rigging conspiracies, including Community Realty Property  
12 Management ("CRPM") and Community Fund, LLC (collectively, "CFUND"). CRPM primarily  
13 managed rental properties, while Community Fund was the entity that took title to homes that were  
14 purchased at the foreclosure auctions. PSR ¶ 22; Loeb Decl. Ex. A (Trial Tr. 1473:1-11). Community  
15 Fund either rented out or fixed up and sold the homes it purchased at the foreclosure auctions. Loeb  
16 Decl. Ex. A (Trial Tr. 2180:7-10). Community Fund also offered various services to investor clients  
17 interested in purchasing properties at real estate foreclosure auctions, in exchange for commissions.  
18 Loeb Decl. Ex. A (Trial Tr. 2158:12-2159:6; 2225:18-20).

19 CFUND was a large operation. Barta estimated that Marr had about twenty employees helping  
20 him purchase properties every day. *Id.* at 1427: 5-9. Casorso testified that CFUND was sometimes  
21 purchasing upwards of two properties a day over a period of several years. *Id.* at 2219:12-14.

22 Since 2010, Sanchez and Marr have had a partnership called Marr, Sanchez & Associates. PSR  
23 ¶ 75. The Sanchez/Marr partnership owns 23 properties. *Id.*

### II. Sanchez's Participation In The Bid-Rigging Conspiracy

24  
25 The documentary, testimonial, and audiovisual evidence presented at trial overwhelmingly  
26 implicated Sanchez in the bid-rigging conspiracies from 2008 until 2011. Sanchez (along with Wesley  
27 Barta and Gregory Casorso) was one of a core group of individuals who represented CFUND at the  
28 public auctions and organized the bid rigging on Marr's behalf. PSR ¶ 23; Loeb Decl. Ex. A (Trial Tr.

1 1444:1-11). Sanchez represented CFUND at the auctions in both Alameda and Contra Costa counties  
2 and also had his own clients he represented at the auctions. *Id.* at 1479-80. Loeb Decl. Ex. A (Trial Tr.  
3 1434:3-36:6; 1496-97).

4 As shown by, for example, the hundreds of round sheets admitted at trial, Sanchez and his  
5 CFUND colleagues routinely reached agreements to stop bidding at the Alameda and Contra Costa  
6 County foreclosure auctions as part of two criminal bid-rigging conspiracies. From 2008 to 2011,  
7 Sanchez personally rigged over 400 properties on behalf of CFUND and his clients. PSR ¶ 22.

8 The cooperating witnesses who testified at trial all implicated Sanchez. Doug Ditmer and  
9 Wesley Barta described Sanchez's frequent participation in both the Alameda and Contra Costa  
10 conspiracies. Loeb Decl. Ex. A (Trial Tr. 896:1-897:7). Charles Rock described Sanchez's role in  
11 Contra Costa County, and Brad Roemer and Danli Liu described his role in Alameda County. *Id.* at  
12 1829:2-14, 1834:3-1835:25 (Rock); 1958:1-7, 1967:1-21, 1969:14-1972:5 (Liu). The undercover FBI  
13 agent also implicated Sanchez, testifying about multiple occasions when Sanchez collected a bid-rigging  
14 payoff from the agent. PSR ¶ 23.

15 This testimony is corroborated by documents, many of which were written by Sanchez himself.  
16 Sanchez had a regular practice of taking notes during the rounds. Barta introduced a summary of those  
17 round sheets at trial. Loeb Decl. Ex. A (Trial Tr. 1552:2-1555:10). According to that chart, Sanchez  
18 authored nearly 100 round sheets for properties auctioned in both counties.

19 A long-time employee of Michael Marr, by the time of the conspiracy, Sanchez was teaching  
20 other Marr employees to do rounds, including Casorso, who became Marr's lead representative in  
21 Alameda County. *Id.* at 2245:23-2246:5. Sanchez himself also organized and led rounds. Loeb Decl.  
22 Ex. A (Trial Tr. 1835:14-16 (Rock testimony that Sanchez organized rounds); 2246:11-13; 2270:17-18  
23 (Casorso testimony that he and Sanchez frequently led rounds)).

24 Sanchez's responsibilities did not stop with the conducting the rounds themselves. He kept  
25 track of the overall accounting for the rounds within Marr's organization. Loeb Decl. Ex. A (Trial Tr.  
26 2271:15-22. He handled tabulation, collection, and disbursement of round money. *Id.* at 2271:23-25.  
27 When other members of Community Fund received payments from coconspirators, Sanchez was the one  
28 they would call to confirm that amounts were correct. *Id.* at 2274:5-8. This was no small feat: Marr

1 participated in rigging over 1100 properties over the course of the conspiracy, and a single act of bid-  
2 rigging could involve upwards of ten coconspirators. Loeb Decl. Ex. B (list of properties rigged by  
3 Community Fund). A box recovered from the attic of Marr's office showed intricate recordkeeping,  
4 with a folder labeled for each member of the conspiracy, containing ledgers detailing hundreds of bid-  
5 rigging transactions between Community Fund and the other members of the conspiracy, down to the  
6 dollar. *Id.* at 1229:7-1242:11 (FBI agent testimony describing seizure of records); *see also id.* at 1611:5-  
7 1614:17; 1616:5-1616:17; 1637:3-16:40:10 (Barta testimony regarding examples of ledgers and checks);  
8 Loeb Decl. Ex. C (Ex. 17 (demonstrative summarizing Community Fund ledgers). Barta identified  
9 Sanchez's handwriting on the ledgers that Community Fund used to track the amounts owed between  
10 Marr and other participants in the conspiracy. *See, e.g.,* Loeb Decl. Exs. A (Trial Tr. 1613:15-17;  
11 1613:23-25; 1614:20-24); C (Ex. 17). It is predominately Marr's and Sanchez's handwriting that  
12 appears on these ledgers, demonstrating Sanchez's elevated role in Marr's organization. Barta and  
13 Casorso testified that they would turn over their round sheets and sales summaries at the end of the day,  
14 first to Marr and then to Sanchez. *Id.* at 1436:10-16, 1491:21-1492:3, 2270:1-25. Sanchez used  
15 Casorso's, Barta's, and his own round sheets to create running tallies of the monies owed to and from  
16 coconspirators. *Id.* at 1436:10-16; 1520:7-1521:20; 1563:3-1564:12. Sanchez also attended  
17 reconciliation meetings with coconspirators to settle any disputes as to what was owed amongst them.  
18 *Id.* at 897:18-898:17, 2272:1-11.

19 At other times, when there were disputes about how much was owed during these meetings,  
20 Marr or Community Fund employees brought in Sanchez to make the call about who owed who how  
21 much. For example, Roemer testified that Casorso instructed him to check with Sanchez to verify the  
22 payoff amounts that Roemer owed the Marr organization. Loeb Decl. Ex. A (Trial Tr. 1283:14-  
23 1285:15). The undercover agent also captured a recording of Casorso calling Sanchez to verify the  
24 amount that Marr's organization was owed on a payoff deal. *Id.* at 663:7-664:10.

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**ARGUMENT**

**I. Guidelines Calculations**

**A. Sanchez’s Guidelines Range Is 33 to 41 Months**

The government concurs with the Guidelines calculation in the PSR. Sanchez’s total offense level should be 20, as calculated below:

i.	Base Offense Level (§2R1.1(a))	12
ii.	Submission of Noncompetitive Bids (§2R1.1(b)(1))	+1
iii.	Volume of Affected Commerce (§2R1.1(b)(2)(B))	+4
iv.	Role in the Offense Adjustment (§3B1.1(b))	+3
v.	Acceptance of Responsibility (§3E1.1(a))	0
	<b>Total Offense Level</b>	<b>20</b>

An offense level of 20 results in a Guidelines range of 33 to 41 months for a defendant in Criminal History Category I.

**1. The Guidelines Use Volume of Commerce to Calculate the Offense Level, and Sanchez Should Receive a Four-Level Adjustment**

Under the Guidelines, the base offense level is adjusted upward depending on the “volume of commerce attributable to the defendant,” which is “the volume of commerce done by him or his principal in goods or services that were affected by the violation.” U.S.S.G. §2R1.1(b)(2). Sanchez’s volume of commerce is \$20,725,993.<sup>1</sup> This includes approximately 120 properties in which Sanchez participated in the bid-rigging and Community Fund (or Sanchez directly) won the property, paying \$19,604,622 in public-auction purchase prices and owing an additional \$1,121,371 in payoffs to coconspirators for those properties. Loeb Decl. Ex. D (property list).<sup>2</sup> The government therefore

<sup>1</sup> The PSR includes the correct volume of commerce in paragraphs 29 and 90. Paragraph 38 of the PSR notes that the volume of commerce is \$11,186,940, which appears to be a holdover from the draft PSR (before the government submitted revised volume-of-commerce figures with supporting evidence). Either volume-of-commerce figure results in a four-point increase in Sanchez’s offense level.

<sup>2</sup> Within the \$20,725,993 total, Sanchez personally won \$12,242,055 worth of rigged property (for either himself or Community Fund). The remaining \$8,483,938 reflects properties where Sanchez participated in the bid rigging for Community Fund and another Community Fund employee (such as Wesley Barta) ultimately won the round. The evidence at trial showed that Marr routinely obtained two “seats” in each round. *See, e.g.*, Loeb Decl. Ex. A (Trial Tr. 1478:8-23) (Barta explaining how he and Sanchez were in rounds together); *Id.* 2246:22-25 (Casorso testimony that Marr eventually wanted a second seat in every round).

1 concurs with the Probation Officer's recommendation to apply a four-level enhancement for a volume of  
2 commerce of between \$10 and \$50 million. *See* PSR ¶ 38; §2R1.1(b)(2)(B).<sup>3</sup>

3 The volume of commerce here is the price the coconspirators paid for the rigged properties – the  
4 purchase price at the rigged public auction plus the round payment (or straight payoff). The evidence at  
5 trial established that the round payments and payoffs represented what the conspirators were willing to  
6 pay in addition to what was bid at the public auction. Evidence of the sale price and the total amount bid  
7 in the round (or the negotiated payoff amount) supports including each property on the list.

8 This methodology – valuing each rigged property a defendant or his principal purchased as the  
9 sum of the purchase price of the property at the public auction plus any payoff – is the same one that the  
10 government and the Court have applied when sentencing defendants in the related cases.

11 **(i) The Plain Language of the Guidelines Requires Rejecting Sanchez's**  
12 **Argument that "Harm" Should Be Used to Calculate His Offense**  
13 **Level**

14 Sanchez's response to the PSR argued that "no adjustment for VOC is appropriate because there  
15 was no evidence of economic harm presented." He further claims that the only "evidence relevant on  
16 the issue of actual harm is a study conducted by Jeffrey Andrien," a study that the Court excluded at trial  
17 as *irrelevant* and unreliable. Pretrial Order No. 5 at 13 (Dkt. 247). This argument contradicts the plain  
18 language of the guidelines, which state that the volume of commerce determines the offense level.  
19 U.S.S.G. §2R1.1(b)(2).

20 Sanchez also claimed, "volume of commerce is a somewhat arbitrary measure of harm,  
21 especially in cases that are adjudged under a *per se* theory." Were Sanchez correct, the Sentencing  
22 Guidelines would be irrelevant. That is because the government uses the criminal law to prosecute *per*  
23 *se* cases – rule of reason cases are not tried criminally, as a matter of policy. *See* U.S. DEP'T OF JUSTICE,  
24 ANTITRUST DIVISION MANUAL § III(1) (2017), <http://www.justice.gov/atr/division-manual> ("current  
25 Division policy is to proceed by criminal investigation and prosecution in cases involving horizontal, per

26 <sup>3</sup> The government provided a final property list to Sanchez on September 26, 2017. The list  
27 included citations to documentary evidence for every single property. The government also stipulated to  
28 Sanchez's requested continuance of his sentencing so that he would have the time he sought to review  
the list. In addition, as noted in footnote 1, paragraph 38 of the PSR erroneously cites a superseded  
volume of commerce figure (\$11,186,940 rather than \$20,725,993), but the discrepancy does not affect  
the offense level.

1 se unlawful agreements such as price fixing, bid rigging, and customer and territorial allocations”). This  
 2 means that the Sentencing Guidelines – and their volume-of-commerce measurement – are used entirely  
 3 in cases “adjudged under a *per se* theory.” To decide that the volume-of-commerce measurement used  
 4 in the Sentencing Guideline should not apply in *per se* cases is therefore akin to discarding the  
 5 Guidelines altogether.

6 **(ii) Volume of Commerce, Rather than the Unreliable “Harm” Analysis**  
 7 **of Jeffrey Andrien, is Appropriate to Use to Calculate Sanchez’s**  
 8 **Offense Level**

8 The Sentencing Commission made a conscious choice to use volume of commerce instead of an  
 9 exact measure of harm. Mr. Andrien’s excluded study, with its many incorrect and unexplained  
 10 assumptions, itself is a testament to the difficulty of measuring economic harm. *See* Opp. to Defs.’ Mot.  
 11 *in Limine* to Admit the Testimony of Jeffrey Andrien at 3-10 (Dkt. 236) (describing numerous flaws in  
 12 Andrien’s analysis). There is no requirement that harm be demonstrated to impose a volume-of-  
 13 commerce adjustment. The Guidelines are clear on this point. The background to the relevant guideline  
 14 explains, “The offense levels are not based directly on the damage caused or profit made by the  
 15 defendant because damages are difficult and time consuming to establish. The volume of commerce is  
 16 an acceptable and more readily measurable substitute.” U.S.S.G §2R1.1, comment. (backg’d). Every  
 17 person sentenced by the Court in the real estate cases has had his offense level determined using the  
 18 volume of commerce.

19 Volume of commerce is not necessarily designed to approximate the actual damages or harm.  
 20 For example, the language regarding fines under the antitrust guidelines recognizes that the average  
 21 gains (the harm caused by the conspiracy) are lower than the volume of commerce.<sup>4</sup>

22 Sanchez’s approximately \$20 million volume-of-commerce actually understates the true  
 23 magnitude of his role in the conspiracy. According to the Guidelines, “the volume of commerce  
 24

25 <sup>4</sup> The volume-of-commerce-based adjustments in the Sentencing Guidelines have very high  
 26 dollar thresholds to trigger any increases, particularly compared with other guidelines that are based on  
 27 economic harm. For example, a volume of commerce of \$50-\$100 million leads to a six-point increase  
 28 under the antitrust guideline, 2R1.1. Under the fraud guideline, Section 2B1.1, a loss of \$50-\$100  
 million would lead to an increase of at least 22 levels. This indicates that the Commission consciously  
 chose volume-of-commerce as a measure, and did not see it as a 1:1 substitute for harm, and set the  
 increases accordingly. There is nothing unfair about imposing volume-of-commerce based increases  
 without requiring the government to prove harm.

1 attributable to an individual participant in a conspiracy is the volume of commerce done by him or his  
2 principal in goods or services that were affected by the violation.” U.S.S.G. §2R1.1(b)(2). Sanchez’s  
3 volume-of-commerce calculation only reflects the relatively fewer auctions in which he (or a  
4 Community Fund colleague who was in the round together with Sanchez) acquired a property, not where  
5 he merely earned a payoff after losing the round. Thus, roughly 300 of the total properties Sanchez  
6 rigged (approximately 75%) result in a zero volume of commerce and do not increase his guidelines  
7 range. Sanchez’s volume of commerce also does not include the majority of transactions done by his  
8 “principal,” Community Fund – only the transactions in which Sanchez was personally involved in a  
9 round or payoff (and where Community Fund won the property).

10 For these reasons, a sentence tied to volume of commerce appropriate. And, when the Court  
11 completes the required step of calculating Sanchez’s Guidelines range, there is really no question that  
12 volume of commerce is the appropriate measure to use, and that Sanchez’s offense level should be  
13 adjusted upward based on his volume of commerce.

14 **2. Sanchez Should Receive A Three-Level Upward Adjustment For His Role As**  
15 **A Manager or Supervisor**

16 The PSR applies a three-point upward adjustment based on the defendant’s role as a manager or  
17 supervisor conspiracy, concluding: “Mr. Sanchez had a central role organizing the day-to-day operations  
18 of the conspiracy at the courthouse steps, recruited new members, and initiated and led rounds and other  
19 bid rigging agreements.” PSR ¶ 40. The government agrees. Sanchez played a managerial role both in  
20 CFUND, the largest organization involved in the two conspiracies, and in the conspiracies themselves,  
21 distinguishing himself among the over 40 participants involved in those conspiracies. The Court should  
22 apply the three-point upward adjustment.

23 Section 3B1.1(b) provides: “If the defendant was a manager or supervisor (but not an organizer  
24 or leader) and the criminal activity involved five or more participants or was otherwise extensive,  
25 increase by 3 levels.” A defendant may receive an adjustment either if he is the manager or supervisor  
26 of one or more participants, or if he “exercised management responsibility over the property, assets, or  
27 activities of a criminal organization.” U.S.S.G. §3B1.1 comment. (backg’d).

28 Under Section 3B1.1, an enhancement may be proper where “a defendant organizes others in the

1 commission of the criminal activity even though he does not retain a supervisory role over the other  
2 participants. The enhancement reflects the greater level of culpability of the participant who arranges the  
3 transaction.” *United States v. Varela*, 993 F.2d 686, 691–92 (9th Cir. 1993) (finding an upward  
4 adjustment under §3B1.1 proper where a defendant “coordinate[ed] the activities of the other  
5 participants to the extent necessary to complete the transaction”); *see also United States v. Woodbury*,  
6 71 F. App’x 698, 698–99 (9th Cir. 2003) (affirming a three-level upward adjustment where defendant  
7 instructed others on transferring funds, often compensated them, and on at least one occasion provided  
8 transportation); *United States v. Koenig*, 952 F.2d 267, 274 (9th Cir. 1991) (affirming a three-level  
9 adjustment when the defendant “played some role in educating and directing the group”).

10 Sanchez rose through the ranks to play a leading role in Marr’s bid-rigging organization. He  
11 instigated agreements among members of the conspiracy, outbid investors who refused to comply, and  
12 regularly led rounds. Among multiple employees who rigged bids at the auctions for Marr – including  
13 Barta and Casorso, who were especially prominent participants – he was the only one entrusted to  
14 supervise the process of accounting for round debts. This role, in turn, gave him a leadership role in the  
15 conspiracy as a whole, given Marr’s unmatched economic power in the conspiracy and the fact that  
16 Marr’s organization – led by Sanchez – engaged in fastidious recordkeeping and held other members of  
17 the conspiracy to account for their bid rigging payments. The government has recommended a three- or  
18 four-point aggravating role enhancement for a very small group of participants in the conspiracy (only  
19 4-5 individuals) who were the most culpable. These individuals either directed large organizations with  
20 many employees who were deeply involved in the bid rigging (Michael Marr, Alvin Florida, and George  
21 Cheng) or were leaders of the conspiracies at the courthouse steps (Michael Galloway, Javier Sanchez) –  
22 coupled with, in Sanchez’s case, a leadership role in the accounting activities of the conspiracy.

23 The factors outlined in the commentary to Section 3B1.1 support this conclusion. Section 3B1.1  
24 states that courts should consider factors including (1) the exercise of decision making authority, (2) the  
25 nature of participation in the commission of the offense, (3) the recruitment of accomplices, (4) the  
26 claimed right to a larger share of the fruits of the crime, (5) the degree of participation in planning or  
27 organizing the offense, (6) the nature and scope of the illegal activity, and (7) the degree of control and  
28 authority exercised over others. U.S.S.G. §3B1.1, comment. (n.4). As this Court has recognized,

1 coconspirators who are substantially more culpable should receive an upward adjustment. Loeb Decl.  
2 Ex. E at 31:18-21 (Transcript of June 7, 2017 Sentencing Hearing, *United States v. Joyce*, No. 14-cr-  
3 607).

4 In particular, Sanchez's prominence in the conspiracies in both counties, in illegal activity of an  
5 extensive and broad nature, and the critical organizing role he played in managing the accounting of the  
6 conspiracy support applying the three point-adjustment. Because of his leadership at the courthouse  
7 steps, his role as Marr's right-hand man, and his supervision over the accounting of two vast, multi-year  
8 conspiracies, the Court should give Sanchez a three-point adjustment for the aggravating role he played.

9 **(i) Each Conspiracy Included More than Five Participants**

10 Section 3B1.1(b) requires that there be at least five participants in the conspiracy for a defendant  
11 to be eligible for an aggravating role adjustment. Here, the evidence at trial established that there were  
12 at least five participants in the bid-rigging conspiracies in each of Alameda and Contra Costa counties.  
13 Ditmer and Barta introduced round sheets authored by various members of their organizations involving  
14 properties that were rigged in Alameda and Contra Costa counties. *See* Loeb Decl. Ex. C (Exs. 7-8).  
15 The round sheets implicated dozens of coconspirators in both counties. *See, e.g.*, Loeb Decl. Ex. C  
16 (Exs. 200, 501 ((round sheets))). Five coconspirators involved in the Alameda County conspiracy –  
17 Barta, Ditmer, Bradley Roemer, Danli Liu, and Casorso – testified at trial. Three coconspirators who  
18 were also involved in Contra Costa County, Barta, Ditmer, and Rock, also testified at trial and  
19 implicated several other coconspirators. In addition, well over five coconspirators in each county have  
20 pleaded guilty to or been convicted at trial for bid rigging.

21 **(ii) Sanchez Organized and Planned the Offense, Playing a Leadership**  
22 **Role in Community Fund and the Conspiracy as a Whole**

23 Sanchez played an extensive managerial and supervisory role in Community Fund – the biggest  
24 economic power in the conspiracies – and in the conspiracies themselves. Sanchez began working for  
25 Marr when Sanchez was just a teenager. Loeb Decl. Ex. A (Trial Tr. 2270:3-5). He showed talent in  
26 real estate and worked his way up the organization over the years, becoming one of Marr's most trusted  
27 associates. *Id.* at 2270:1-25. Like Wesley Barta and Gregory Casorso, he played a leadership role for  
28 Marr in bid-rigging at the courthouse steps, organizing agreements and leading rounds. A lower-level

1 employee of Marr's who participated in the rounds, Guillermo Sanchez, told the FBI that, at the  
2 auctions, he did what Sanchez, Barta, and Casorso told him to do. Loeb Decl. ¶ 7; Loeb Decl. Ex. A  
3 (Trial Tr. 1434:7-9) (Barta testimony identifying Guillermo Sanchez); Trial Tr. 2247:15-21 (Casorso  
4 noting Guillermo Sanchez's participation in rounds); Loeb Decl. Ex. C (Exs. 229, 237 (Sanchez-  
5 authored round sheets for rounds in which both he and Guillermo Sanchez participated)).<sup>5</sup>

6 Sanchez's full role in Marr's organization was superior to Barta's and Casorso's, however. In  
7 fact, it was Sanchez who first taught Casorso how to do rounds. Loeb Decl. Ex. A (Trial Tr. 2270).

8 Sanchez's most important leadership role for the Marr organization was to manage the round  
9 money. This was a major responsibility: evidence at trial showed that Marr could be involved in five  
10 rounds in a single county on a single day, each netting him hundreds or thousands of dollars and  
11 involving transactions back and forth with many coconspirators. *See, e.g.*, Loeb Decl. Ex. C (Ex. 691  
12 (round sheet with records from five rounds, each including at least one Marr representative)). Casorso  
13 testified that "Sanchez kept track of the overall accounting of rounds." Loeb Decl. Ex. A (Trial Tr.  
14 2271:19-22).

15 Barta and Casorso testified that they would turn over their round sheets and sales summaries at  
16 the end of the day to Sanchez (who, according to Barta, took over that role from Michael Marr). Loeb  
17 Decl. Ex. A (Trial Tr. 1436:10-16, 1491:21-1492:3, 2270:23-25). Sanchez used Casorso's, Barta's, and  
18 his own round sheets to create running tallies of the monies owed to and from coconspirators. *Id.* at  
19 1436:10-16; 1520:7-1521:20; 1563:3-1564:12. Sanchez also attended some reconciliation meetings  
20 with coconspirators to settle any disputes as to what was owed amongst them. *Id.* at 897:18-898:17,  
21 2272:1-11. At other times, when there were disputes about how much was owed during these meetings,  
22 Marr or Community Fund employees brought in Sanchez to make the call about who owed who how  
23 much. For example, Roemer testified that he was directed by Casorso to check with Sanchez to verify  
24 the payoff amounts he owed the Marr organization. *Id.* at 1283:14-1285:15. The undercover agent also  
25 captured Sanchez's central role in collecting money. In fact, his first meeting with Sanchez involved  
26

27  
28 <sup>5</sup> Guillermo Sanchez's statements also show that Sanchez exercised "some degree of control or  
organizational authority" over him, further justifying the application of the three-point adjustment.  
*United States v. Koenig*, 952 F.2d 267, 274 (9th Cir. 1991).

1 paying for a deal the undercover agent had made with Casorso. *Id.* at 662:21-663:1. In another  
2 recording, the undercover agent met with Casorso to settle up for various deals; before accepting the  
3 undercover agent's money, Casorso called Sanchez to verify the numbers. *Id.* at 660:20-661:15; 664:3-  
4 7.

5 In addition to the trial witnesses, other members of the conspiracy, including Jorge Wong, Barry  
6 Heisner, and Brian McKinzie, also described Sanchez's role negotiating and reconciling round  
7 payments. Loeb Decl. ¶ 8. According to Hilton Wong, while Michael Marr was present for one such  
8 reconciliation meeting at Marr's office, Sanchez took the lead. *Id.* ¶ 9. Lower-level employees, such as  
9 Barta or Alex Martinez, were not included in these meetings between Michael Marr and high-level  
10 representatives of coconspirators.

11 Sanchez's role creating and organizing the round sheets and total payoffs owed for CFUND was  
12 especially critical. Marr controlled the conspiracy in part because he had the most comprehensive and  
13 consistent records. And one of Sanchez's many roles was to help keep those records.

14 Casorso described Sanchez's leadership role with respect to round money during cross-  
15 examination:

16 Q. And Javier Sanchez would then calculate who owes what -- who owes who and how  
17 much for those rounds, right?

18 A. Sometimes I would run the calculations on my daily sheet, and sometimes Javier  
19 would do it.

20 Q. Okay. But you believed, right, that one of Javier Sanchez's duties was to keep track  
21 of the round debt?

22 A. Yes. He kept track of the overall accounting of rounds, yes, he did.

23 Q. And I believe you said that he handles tabulation, collection, and disbursement of  
24 round money, right?

25 A. He was actively involved in that, yes.

26 Q. And you -- he also had a notebook where he would keep track of these ongoing debts,  
27 right?

28 A. He did, yes.

Q. And he also kept records in his -- on his office computer.

A. He did.

Q. And he would keep those records on his laptop.

A. He did.

Q. And Javier Sanchez and Michael Marr would then set up meetings with other round  
participants to settle up for rounds, right?

A. They did, yes.

Q. All right. So at least on occasion you would meet with bidders to settle up for rounds.

1 A. I would meet to receive the payments, yes. But I didn't initiate these. I didn't discuss  
2 the documents or the amounts. I just simply processed the receipt.

3 Q. Okay. And you would then give that over to Javier Sanchez, I think you said?

4 A. Javier or Michael Marr, yes.

5 Q. Okay. And you would also sometimes call Javier Sanchez to verify the numbers that  
6 you were being told from another bidder, right?

7 A. Yes.

8 Loeb Decl. Ex. A (Trial Tr. 2271:15-2274:8). Barta also identified Sanchez's handwriting on the  
9 ledgers that Community Fund used to track the amounts owed between Marr and other participants in  
10 the conspiracy. *See, e.g.*, Loeb Decl. Exs. A (Trial Tr. 1613:15-17; 1613:23-25; 1614:20-24); C (Ex.  
11 17). Only Marr's and Sanchez's handwriting appears on these ledgers, demonstrating Sanchez's  
12 elevated role in the upper echelon of Marr's organization.

13 But Sanchez was not simply a leader within Marr's organization; he also played a leadership role  
14 in the bid-rigging conspiracies generally. First, managing the round payments for Marr's organization  
15 gave him a *de facto* role managing and enforcing payments owed in the conspiracy as a whole. Marr  
16 kept the most extensive payoff records among the coconspirators, keeping copies of round sheets,  
17 ledgers detailing every bid-rigging transactions, and copies of checks. Loeb Decl. Ex. A (Trial Tr. at  
18 1228:10-1234:16; 1238:24-1241:10 (testimony of FBI agent regarding discovery of box and its contents  
19 in Marr's attic); Trial Tr. at 1596:5-23; 1598:1-15; 1600:7-10; Loeb Decl. Ex. C (Exs. 17 (summarizing  
20 ledgers that track bid-rigging payments owed) 61-34 (Ditmer ledger); 71-013 (Roemer ledger); 71-014  
21 (copy of check) (sample documents FBI agent identified as found in file folders)).

22 Coupled with CFUND's economic power at the auctions, *see, e.g.*, Loeb Decl. Ex. A at 1427:5-  
23 9; 1434:7-15 (Community Fund had twenty employees involved in purchasing properties, including five  
24 or six auction representatives every day); 2219:12-14 (CFUND purchased multiple properties a day);  
25 1489:4-6 (Marr was the "800-pound gorilla" at the auctions), the detailed payment records made  
26 CFUND the authority when it came to collecting and tracking bid-rigging payoffs. Indeed, Marr and  
27 Sanchez were the ones who usually organized reconciliation meetings with other members of the  
28 conspiracy. *See, e.g., id.* at 2272:8-11 (Casorso testimony). As captured on a recording played at trial,  
the first words out of Sanchez's mouth when he met the undercover agent were, "Dude, you owe me a  
grand." *Id.* at 676:25-677:4. As summarized by Ditmer, Marr – and his organization -- "was the final

1 determining factor of who -- how much money was going -- the -- how the money was going to be  
2 divvied out.” *Id.* at 894:7-9.

3 Sanchez also played a leadership role in the conspiracy as a whole because he organized and  
4 directed other participants in the bid-rigging conspiracy and led rounds. As Marr’s deputy, Sanchez had  
5 all the resources that Marr’s organization offered to exercise extensive leverage and control over other  
6 bidders at the auctions. For example, Charles Rock described Sanchez as a “powerful individual” who  
7 was a “force to be reckoned with” and was “in charge” of the conspiracy:

8 Q. Mr. Rock, how would you characterize the significance of Mr. Sanchez's role in the  
9 bid-rigging?

10 A. Yes. Mr. Sanchez is a powerful individual. He's -- I like him actually, but he was a  
11 -- a force to be reckoned with. He -- he and Mike Galloway and Wes Barta, to some  
12 extent, sort of were in charge of a lot of the place, in my experience.

13 Q. So what kind of things would you observe Mr. Sanchez doing that gave you that  
14 impression?

15 A. Well, most of the rounds that happened would include one of those three individuals.

16 Q. Did Mr. Sanchez appear to organize some of the agreements to stop the bidding at  
17 the public auctions?

18 A. Yes.

19 Q. And can you tell me what your impression was of -- you know, what was his  
20 misdemeanor in organizing the agreements?

21 A. Well, as I said, he's fairly vocal and forceful, is a power to be reckoned with. You  
22 know, he was very good at it.

23 Q. What kinds of things would Mr. Sanchez do to organize the agreements?

24 A. Like the others, there would be both spoken and nonverbal communications,  
25 organizing individuals who were interested in the property and being involved in a  
26 round.

27 Loeb Decl. Ex. A (Trial Tr. 1834:18-1835:25).

28 Danli Liu testified that Sanchez was one of the first people to approach her to participate in the  
bid-rigging conspiracy, for a property on Bowie Common in Fremont. Sanchez organized a \$12,000  
payoff, which he split with Garry Wan, in exchange for his agreement to stop bidding against Liu:

Q. Okay. What happened during the public auction for Bowie?

A. I participated, and it was the last two people were bidding was between me and Javier Sanchez. And he -- he offered me 5,000 to stop. And I didn't want to stop because I wanted the property. So we later came to an agreement that I would pay -- I would pay Javier Sanchez 10,000 and I would pay Garry Wan for them to stop bidding against me.

- 1 Q. Okay. So let me just back up a minute. So you were bidding during the public auction  
2 for Bowie?
- 3 A. Yes.
- 4 Q. And who else was bidding?
- 5 A. Garry was there, Marr was -- I mean, Javier Sanchez was there. But it was mainly  
6 Javier Sanchez and I was bidding against each other.
- 7 Q. Okay. And during the public auction while you were bidding, Javier Sanchez  
8 approached you?
- 9 A. Yes.
- 10 Q. And what did he say?
- 11 A. He said he'll pay me 5,000 to stop --
- 12 Q. And you --
- 13 A. -- bidding against him.
- 14 Q. And what did you say?
- 15 A. I said no.
- 16 Q. And did you continue to bid?
- 17 A. Yes.
- 18 Q. And then what happened?
- 19 A. And then we bid up, and I told him, I said, "Why don't I offer you something to stop?"  
20 And we came to an agreement at 10,000.
- 21 Q. Okay. So after you continued bidding for a little while longer, then you offered --
- 22 A. Correct.
- 23 Q. -- to pay him for him to stop bidding?
- 24 A. Yes.
- 25 Q. And how much did you offer him to stop bidding?
- 26 A. 10,000.
- 27
- 28
- ...
- Q. And when you were approached by Javier Sanchez, do you recall that Javier Sanchez  
telling you that he would only stop if you paid both of them?
- A. Yes.
- Q. Did -- is that what he said?
- A. Yes.
- Q. And if you hadn't paid Garry Wan, could he have continued to bid at the public  
auction?
- A. Yes. Garry Wan could have continued to bid against me.
- Q. And after you pay -- after you agreed to pay both Javier Sanchez and Garry Wan, did  
either of them continue bidding at the public auction?
- A. No.

1 Loeb Decl. Ex. A (Trial Tr. 1970:20-1972:5). Liu also testified that, in the beginning, she thought  
2 Sanchez *was* Michael Marr, mistaking him for the ultimate decision maker. *Id.* at 1969-1970. Her  
3 round sheets show that she wrote “Mar” where Sanchez participated.

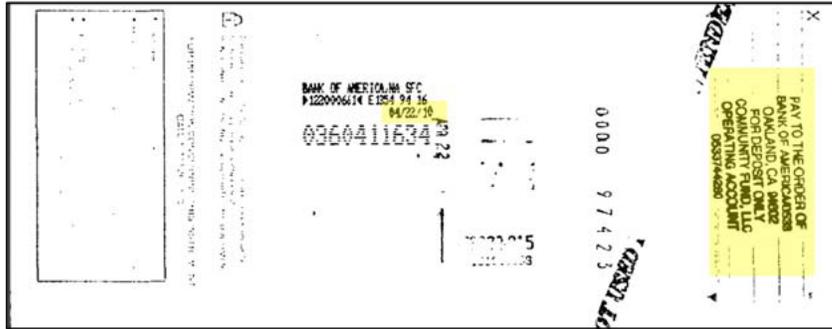
4 Liu’s and Rock’s testimony are just two examples of the fact that coconspirators perceived  
5 Sanchez’s authoritative role at the auctions. He was seen as a big player among the several dozen  
6 participants; someone who, across two counties, initiated, organized, and led rounds. *See, e.g.*, Loeb  
7 Decl. ¶ 10. Casorso also testified that Sanchez frequently led rounds. Loeb Decl. Ex. A (Trial Tr.  
8 2270:17-18). Other members of the conspiracy also named Sanchez as a frequent leader and organizer  
9 of the rounds. *See, e.g.*, Loeb Decl. ¶ 11. Thomas Legault referred to Sanchez as the spearhead of the  
10 collusion. *Id.* ¶ 12. Hilton Wong and Keith Slipper identified Sanchez as a bidder who would often win  
11 the rigged properties at the public auction; the public auction winner would usually end up leading the  
12 round. *Id.* ¶ 13; Loeb Decl. Ex. A (Trial Tr. 2246:11) (Casorso testimony).

13 Finally, Sanchez initiated direct payoff agreements, such as the payoff described by Danli Liu for  
14 Bowie Common. *See also* Loeb Decl. ¶ 14 (description of Sanchez soliciting \$2,000 not to bid against  
15 coconspirator). He also initiated payoff agreements negotiated over the phone during auctions with  
16 coconspirators Grant Alvernaz and Doug Moore. *Id.* ¶ 15. Keith Slipper described how Sanchez “held  
17 up” coconspirator Michael Renquist at a public auction, forcing a deal in which Renquist would agree to  
18 pay so that Sanchez would stop bidding against him, and noted that Sanchez frequently threatened to bid  
19 against Slipper unless Slipper paid him to stop. *Id.* ¶ 16.

20 **(iii) Sanchez Recruited Accomplices and Claimed a Share of the Fruits of**  
21 **the Crime**

22 With respect to recruitment of accomplices, trial testimony showed that Sanchez recruited others  
23 into the bid-rigging conspiracy. Both Ditmer and Rock testified about an incident where Sanchez,  
24 Galloway, and another coconspirator, Bill Freeborn, approached an outside bidder – Penny Pickett – and  
25 negotiated a \$100,000 payoff for their agreement to stop bidding against her for a home located on  
26 Holiday Drive in Alamo, California. Loeb Decl. Ex. A (Trial Tr. 1199:12-18, 1836:20-1840:1).  
27 Sanchez and Galloway approached Pickett during the public auction for this property and demanded one  
28 hundred thousand dollars in order for them to stop bidding against her for the property. *Id.* After some





See Loeb Decl. Ex. C (Ex. 1696). Community Fund then wrote checks to distribute the proceeds of the \$100,000 among the members of the conspiracy involved. See, e.g., Loeb Decl. Ex. C (Ex. 525) (\$15,000 check to Ditmer).

Alamo was not the only time Sanchez brought another bidder into the bid rigging. Thomas Legault explained that Sanchez first asked Legault to “work” with the other members of the conspiracy in early 2010. Loeb Decl. ¶ 17. Legault first tried ignoring him, but Sanchez did not relent, continuing to urge Legault to stop bidding against him by telling Legault that “it will work out well for you.” *Id.* ¶ 18. Legault acquiesced to Sanchez’s exhortations and joined the conspiracy. *Id.*; see also Plea Agreement, *United States v. Thomas Legault*, No. 11-cr-00429 (Dkt. 40). Sanchez also tried to convince coconspirator Douglas Moore to join rounds. Loeb Decl. ¶ 19.

Sanchez’s recruiting role extended to educating new members of the conspiracy by teaching them how to do rounds. Loeb Decl. Ex. A (Trial Tr. 2270:14-16); Loeb Decl. ¶ 20. According to Jorge Wong, Sanchez invoked Community Fund’s economic might when recruiting him, saying something to the effect of “You have to work, if you don’t work you’re not going to buy anything. We have more money than anyone here.” Loeb Decl. ¶ 21.

One way Sanchez recruited accomplices into the conspiracy was by outbidding other bidders at the auctions who refused to participate, so that they could not buy the properties they wanted. Loeb Decl. Ex. A. (Trial Tr. 1824:19-25). When asked why he agreed to stop bidding against his competitors at the auctions, Charles Rock explained that “if one generally tried to go against the flow, [] the prices would be bid up so high that you wouldn’t want the property anymore.” *Id.* at 1824:5-12. When asked to name other bidders who engaged in that practice, Rock named Sanchez, Galloway, and Freeborn. *Id.* at 1824:19-25.

1 Evidence also indicates that Sanchez personally profited from the conspiracies, as Sanchez  
2 admitted in his response to the PSR. Loeb Decl. Ex. F at 2 (“There were times that Mr. Sanchez  
3 personally profited from a round”). As Sanchez admitted, he could retain round payments if he had his  
4 own client (and was not simply representing Community Fund). *Id.*; Loeb Decl. Ex. A (Trial Tr.  
5 1479:17-22) (Sanchez had his own clients). Several documents corroborate this admission, indicating  
6 that Sanchez was entitled to a share of illicit proceeds he generated from the rounds and payoff  
7 agreements. Loeb Decl. Exs. A (Trial Tr. 1643:4-1643:10); C (Exs. 54-018, 54-023; 54-025, 54-50).<sup>6</sup>  
8 This was unique among Marr’s employees – for example, Barta never received any share of round  
9 payments. Loeb Decl. Ex. A (Trial Tr. 1586:20-25). Casorso described himself as merely a “courier”  
10 who delivered round payments. *Id.* at 2289:22. The fact that Sanchez had his own clients and received  
11 a share of round payments further demonstrates his independence and elevated role within Marr’s  
12 organization – the dominant organization in the bid-rigging across both counties.

13 **(iv) Sanchez Participated Extensively In a Large-Scale Conspiracy**

14 Finally, the extensive nature of Sanchez’s participation in this offense, and the nature and scope  
15 of the illegal activity itself, both support the application of the enhancement. His participation in these  
16 conspiracies was a full-time job. He rigged property after property in both counties for over two years,  
17 affecting over \$20 million in commerce. The Marr organization rigged the auction for well over one  
18 thousand homes in these two years; Sanchez *personally* rigged over 400. *See* Loeb Decl. Ex. G. By  
19 contrast, coconspirators Danli Liu and Brad Roemer rigged just 17 and 11 properties, respectively.  
20 Sanchez’s own round sheets show nearly 100 of these homes, indicating that, for at least 100 instances  
21 of bid-rigging, he was the one who led the round. *See, e.g.* Loeb Decl. Ex. A (Trial Tr. 1829:12-15)  
22 (Rock testimony that leading a round involves taking notes). The nature of Sanchez’s participation –  
23 prevalent and widespread –attests to the prominent role he played organizing CFUND’s involvement,  
24 his leadership role in the conspiracy, and his relatively higher degree of responsibility for the  
25 conspiracy. His prominence is particularly significant given the pervasiveness of the two conspiracies,  
26

27 <sup>6</sup> The government is not seeking restitution from Sanchez because it has not identified sufficient  
28 evidence to establish the specific properties for which he personally retained the bid-rigging payoffs. In  
general, though, the evidence establishes that he did have his own clients and could personally profit  
from the rounds, though.

1 each of which involved bid-rigging on a daily (or near-daily) basis at the auctions, affecting thousands  
2 of foreclosed homes, and was perpetrated by dozens of investors and their employees for over two years.

### 3 **3. No Adjustment for Acceptance of Responsibility Applies**

4 The government agrees with the PSR that Sanchez should not receive any reduction for  
5 acceptance of responsibility under U.S.S.G. §3E1.1(a). PSR ¶ 44. A defendant may receive at two-level  
6 offense reduction if he “clearly demonstrates acceptance of responsibility for his offense.” U.S.S.G.  
7 §3E1.1(a). In general, acceptance of responsibility credit is not available to a defendant who “puts the  
8 government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted,  
9 and only then admits guilt and expresses remorse.” U.S.S.G. §3E1.1 comment. (n.2).

10 Sanchez’s response to the PSR claims that his “sole reason for proceeding [to] trial was to  
11 preserve his ability to challenge the constitutionality of the *per se* rule,” and that his pretrial offer to  
12 enter a conditional guilty plea or do a trial by stipulated facts prior to trial manifested an acceptance of  
13 responsibility. His offer did not do so, and the trial record shows that Sanchez ended up choosing to  
14 challenge a far broader range of issues at trial.

#### 15 **(i) Sanchez’s Offer to Conditionally Plead Guilty Did Not Include a Full 16 Admission of Guilt**

17 As the government explained in its sentencing memorandum for Michael Marr, the attempt to  
18 negotiate a conditional guilty plea or stipulated facts does not entitle Sanchez to an adjustment because  
19 Sanchez, like Marr, was not willing to fully admit guilt. *United States v. Schales*, 546 F.3d 965, 976  
20 (9th Cir. 2008) (defendant must admit all of his guilt, cooperation notwithstanding, before receiving  
21 downward adjustment). That is why the negotiations failed.

22 In the negotiations regarding the potential guilty plea, which took place shortly before trial,  
23 Sanchez took the same positions as Marr, and did not negotiate with the government separately.  
24 Changes Marr submitted to the stipulated facts (on behalf of himself and Sanchez) demonstrate that  
25 Sanchez was not willing to accept responsibility for his crimes. *See* Loeb Decl. Ex. H (May 10 e-mail  
26 from Marr’s counsel and attachment). For example, Marr refused to refer to the Alameda County  
27 conspiracy as a “continuing” agreement, declining to acknowledge that there was a single, ongoing  
28 conspiracy, as charged in the indictment. *Id.* ¶ 5. Marr also deleted any reference to the conspiracy as an

1 agreement to “suppress competition” – even though, by definition, that is what a bid-rigging agreement  
2 is. *Id.*; see also Jury Instr. No. 21 (Dkt. 293) (“a conspiracy to rig bids is an agreement between two or  
3 more competitors to eliminate, reduce, or interfere with competition...”).

4 During those negotiations, Marr sought to characterize the rounds as legitimate resales. Instead  
5 of admitting that the rounds determined “payoff amounts and the conspirators who would be awarded  
6 the selected properties,” he suggested that the rounds were “to bid for and sell the properties purchased  
7 at the public auction...” *Id.* ¶ 6. Relatedly, his redline also severed any connection between the round  
8 payoffs and the agreements to stop bidding (again preserving his ability to argue that rounds were  
9 innocent resales and not evidence of the conspiracy). *Id.* (deleting admission that members of the  
10 conspiracy were involved in “[n]egotiating, making, and receiving payoffs for agreeing not to compete  
11 with coconspirators”). This notion that money exchanged between the coconspirators had some  
12 innocent explanation was later belied by the trial record and again shows a failure to accept  
13 responsibility. It also ignores all of the evidence of straight payoffs – payoffs that members of the  
14 conspiracy made to each other to drop out of public auctions.

15 Marr and Sanchez also would not admit that they “personally negotiated payoffs for stopping or  
16 refraining from bidding,” even though, for example, the evidence at trial showed that Sanchez  
17 negotiated a \$100,000 payment from Penny Pickett in exchange for ceasing to bid against her for high-  
18 priced property on Holiday Drive and Alamo, and Sanchez also negotiated a \$10,000 payment to stop  
19 bidding against Liu for the Bowie Common property in Fremont. Loeb Decl. Exs. A (Trial Tr. 1019:23-  
20 1024:9; 1199:7-18; 1207:19-1208:3) (Ditmer testimony concerning Holiday Drive property); 1651:23-  
21 1653:15 (Barta testimony concerning Sanchez’s notes and \$100,000 cashier’s check for Holiday Drive  
22 payoff); 1837:6-1840:1 (Charles Rock testimony concerning Holiday Drive); 1970:21-1971:23 (Danli  
23 Liu testimony regarding Bowie Common), C (Exs. 50-001 (Sanchez’s notes recording Holiday Drive  
24 payoff); Ex. 1696 (\$100,000 cashier’s check for Holiday Drive payoff)).

25 **(ii) Sanchez Contested Essential Elements of Guilt at Trial**

26 Once the plea negotiations failed, Sanchez went to trial and contested several factual elements of  
27 guilt. This also disqualifies him from receiving the adjustment. U.S.S.G. §3E1.1 comment. (n.2).

28 //

1 Sanchez joined Marr’s Rule 29 argument at trial, which was made on behalf of all defendants,  
2 and opened with a claim that the government “failed to prove each element on each count.” Loeb Decl.  
3 Ex. A (Trial Tr. 2093:22-2094:1). Marr disputed whether the evidence showed that there was a single  
4 conspiracy (in each county) as charged in the indictment, characterizing the conduct as a series of one-  
5 off transactions: “the evidence shows at best that every single auction was different. At every single  
6 auction, there were different people there. Every single auction, there was a different agreement,  
7 whether to bid, whether not to bid.” Trial Tr. 2094:16-2094:23. Disputing the existence of the single,  
8 ongoing conspiracy charged in the indictment was one issue the Court raised when Thomas Joyce  
9 requested (and did not receive) an adjustment for acceptance of responsibility. Loeb Decl. Ex. E at  
10 24:13-23; 26:11-13; 28:24 (Transcript of Sentencing Hearing, *United States v. Joyce*, No. 14-cr-607).

11 Marr also disputed whether the evidence showed that any of the defendants “personally entered  
12 into an agreement to reduce or eliminate competition at the auction” – even though every percipient  
13 witness to the conspiracy called by the government testified that the members of the conspiracy agreed  
14 not to bid against each other at the auctions. Loeb Decl. Ex. A (Trial Tr. 2094:24-2095:2). This claim is  
15 particularly unbelievable as to Sanchez, whose name appears on hundreds of round sheets, who was  
16 identified by every coconspirator witness, plus the undercover agent, as personally involved in the bid  
17 rigging, and whose role negotiating direct payoffs to stop bidding was described by Ditmer, Liu, and  
18 Rock, as noted above. In a letter attached to his objections to the PSR, Sanchez now admits that “I made  
19 agreements with others not to bid on certain properties” – a fact he disputed through his Rule 29  
20 argument. Loeb Decl. Ex. F (excerpt from Sanchez’s response to PSR). Finally, Marr even contested  
21 the element of interstate commerce, saying that there “hasn’t been any proof” that any of the funds from  
22 the auctions were sent across state lines. Loeb Decl. Ex. A (Trial Tr. 2095:10-14).

23 Sanchez’s jury addresses further demonstrate that he used the trial not just to preserve his ability  
24 to challenge the *per se* rule, but to dispute several aspects of the case against him. In his opening  
25 statement, Sanchez said, “The evidence will show there was no overarching conspiracy and -- between  
26 2008 and 2011 in either Alameda County or in Contra Costa County,” thus disputing the existence of the  
27 charged conspiracies. Loeb Decl. Ex. A (Trial Tr. 441:20-22).

28 //

1 Sanchez began his closing argument by denying that he had intended to join the charged  
2 conspiracy. Loeb Decl. Ex. A (Trial Tr. 2442:11-14) (“Did Mr. Sanchez and the other defendants intend  
3 to join a conspiracy to suppress competition? I would submit to you they did not.”). This claim was a  
4 way of directly disputing the second element of the charges – whether Mr. Sanchez had knowingly  
5 joined the conspiracy. *See, e.g.*, Jury Instr. No. 21 (Dkt. 293) (“One becomes a member of a conspiracy  
6 by willfully participating in the unlawful plan with the intent to advance or further some object of the  
7 conspiracy”).

8 The principal theme of Sanchez’s closing argument again involved disputing the first element of  
9 the charges – whether the charged conspiracies (two single conspiracies to rig bids in Contra Costa and  
10 Alameda counties) existed at all. He said that the government had not proved that there was any  
11 “overarching conspiracy.” Loeb Decl. Ex. A (Trial Tr. 2442:21-2443:4). Instead, Sanchez said, “every  
12 day at the auctions was different. People had different motivations for every property.” *Id.* at 2442:24-  
13 2443:2. Because different participants had different motivations, “there’s not a conspiracy.” *Id.* at  
14 2444:12-14; *see also id.* at 2444:15-2445:3 (arguing that lack of a common goal disproved existence of  
15 any single conspiracy). Sanchez continued to argue that there was no single conspiracy throughout his  
16 closing. *Id.* at 2448:15-17 (“The variables were too complicated to establish a conspiracy to suppress  
17 competition over two and a half years”), 2448:23-2449:5 (disputing single conspiracy based on lack of  
18 common purpose), 2454:22-2454:24 (“There was not an overall agreement. There was not an  
19 overarching conspiracy”), 2457:17-19 (“Again, it goes to intent. This idea that they are suppressing  
20 competition. There was not an overarching conspiracy.”). His final argument to the jury during his  
21 closing was the same:

22 There was not a single conspiracy to suppress competition in either Alameda County or  
23 Contra Costa County. Motivations shifted from property to property and from day to day  
and from person to person. That’s not a conspiracy.

24 *Id.* at 2466:13-2466:16. Over and over during his closing, therefore, Sanchez denied an “essential  
25 factual element of guilt” – whether the bid-rigging conspiracy charged in the indictment existed.  
26 U.S.S.G. § 3E1.1, comment. (n.2). While he may claim that he went to trial solely to preserve a legal  
27 challenge to the *per se* rule, once Sanchez got to trial, the record demonstrates that he used it as an  
28 //

1 opportunity to challenge essential elements of the charges. For this reason alone, he should not receive  
2 the adjustment.

3 **(iii) Sanchez Did Not Show Any Remorse Well After Trial and His**  
4 **Probation Interview, and the Guidelines Factors Weigh Against**  
5 **Finding that He Has Accepted Responsibility**

6 Sanchez also should not receive an adjustment because he showed no remorse until after trial –  
7 and only belatedly even then, after refusing to do so in his interview with Probation. *See United States*  
8 *v. Nielsen*, 371 F.3d 574, 582 (9th Cir. 2004) (“To receive the two-point downward adjustment, a  
9 defendant must at least show contrition or remorse.”). In Sanchez’s interview with Probation, he  
10 appears to have shown a complete lack of remorse. According to the PSR, his “acceptance of  
11 responsibility” statement in fact consists almost entirely of excuses for his conduct: “At that time, I was  
12 getting paid \$17 per hour. I was following directives and only monetarily benefitted if I had my own client or  
13 was involved with the property. I settled ‘rounds,’ once a month.” PSR ¶ 32. Only in a letter to the Court, in  
14 July 2017, did Sanchez express any remorse or contrition. *Id.* ¶ 33. Even in that letter, his remorse seems  
15 more directed at the “position” he now finds himself in, rather than the decisions he made that brought him  
16 there.

17 The Sentencing Guidelines list factors guiding the application of the adjustment for acceptance  
18 of responsibility, and the majority of those factors weigh against giving Sanchez any such adjustment.  
19 For example, Sanchez did not voluntarily terminate or withdraw from the conspiracy (§3E1.1, comment.  
20 (n.1(B))), make voluntary payment of restitution (C), surrender to authorities after the commission of the  
21 offense (D), provide any assistance to the authorities (E), or voluntarily resign from any office or  
22 position held during the offense (F). By contrast, Thomas Joyce, who, like Sanchez, went to trial, met  
23 twice with FBI in 2011 and provided considerable information regarding his conduct – and he did not  
24 receive any adjustment for acceptance of responsibility.

25 Under the Guidelines, it is a “rare situation” where a defendant clearly demonstrates acceptance  
26 of responsibility despite going to trial. U.S.S.G. §3E1.1 comment. (n.2). This is not one of those rare  
27 situations. Sanchez was not willing to admit guilt before trial and contested basic elements of his guilt  
28 at trial. Only in July, 2017, facing sentencing, did he ever express any regret. No adjustment should  
apply.



1 without any reluctance. Loeb Decl. Ex. A (Trial Tr. 1446:4-9 (Barta); Trial Tr. 1824:7-18 (Rock)). He  
2 had conversations with other bidders about the legality of the conspiracy, telling them that he was not  
3 concerned because the rounds had been taking place for a long time, so no one really cared about them.  
4 Loeb Decl. ¶ 25. He told one coconspirator that if he got caught, he would just “G-A-L” (get a lawyer) –  
5 to get him out of trouble. *Id.* ¶ 26.

6 Sanchez was not some low-level functionary or a solo investor just trying to buy a few  
7 properties. He instigated agreements and payoffs, including a \$100,000 payoff for a single property, the  
8 largest of the conspiracy. He was aggressive at the courthouse steps, urging others to join in  
9 agreements, showing them how to do payoffs, leading rounds, and rigging a remarkable 400 properties  
10 across two counties. He was the only one Michael Marr trusted to collect round sheets and payoff notes  
11 and negotiate the reconciliation of bid-rigging payoffs with other members of the record. In a  
12 conspiracy involving dozens of transactions daily, involving many savvy and long-time real-estate  
13 investors, taking charge of the accounting was a significant and crucial undertaking. The government  
14 recommends a sentence at the mid-range the sentencing guidelines because Sanchez’s conduct was so  
15 flagrant and because he distinguished himself as one of the leaders of the bid rigging.

16 Sanchez’s volume of commerce – over \$20 million – also reflects his deep involvement in the  
17 conspiracies and demonstrates that he was one of the most culpable participants in the bid rigging. It is  
18 on par with George Cheng’s, a leader of the conspiracies who accepted a four-point adjustment. Plea  
19 Agreement ¶ 8, *United States v. Chung Li Cheng, a/k/a George Cheng*, No. 14-cr-593 (Dkt. 23)  
20 (\$24,704,142 volume of commerce). It is even higher than Alvin Florida’s, in part because Sanchez’s  
21 participation spanned two counties. U.S. Sentencing Mem. at 9, *United States v. Florida*, No. 14-cr-582  
22 (Dkt. 491). Put otherwise, Sanchez personally played a role (and, as the trial evidence showed, usually  
23 a significant role) in bid rigging that resulted in the acquisition of over \$20 million of foreclosed homes.  
24 Tallying Sanchez’s conduct in this way highlights the need for a 37-month sentence to reflect the  
25 seriousness of his crime.

26 A mid-range sentence is also necessary because the use of volume of commerce to calculate  
27 sentences for bid rigging results in an “understatement of seriousness” in bid-rigging cases. U.S.S.G.  
28 §2R1.1 comment. (n.6), comment. (backg’d.) (“The Commission believes that the volume of commerce

1 is liable to be an understated measure of seriousness in some bid-rigging cases.”). Even a \$20 million  
2 volume of commerce still reflects only about 25% of the bid rigging in which Sanchez participated,  
3 excluding egregious examples such as the \$100,000 payoff he obtained for ceasing to bid for the Alamo  
4 Drive property. Because of the understatement of seriousness, the Commission recommends that “[t]he  
5 court should consider sentences near the top of the guideline range” in bid-rigging cases. *Id.* comment.  
6 (n.6). The government, however, recommends a sentence in the middle, not the high end, of the range.

7 The proposed sentence also takes into account the need for deterrence. Antitrust crimes are often  
8 hard to detect, taking place in conspiracies that that leave few physical clues. In this case, the  
9 investigation into the corruption at the foreclosure auction took years to piece together. The potential  
10 for evading law enforcement and the resources required to investigate and prosecute such a conspiracy  
11 increases the need for penalties to serve as a deterrent – otherwise, the potential upside from criminal  
12 conduct and the low likelihood of getting caught makes engaging in this type of criminal conduct even  
13 more tempting. The pervasive nature of this conspiracy also increases the need for deterrence. Dozens  
14 of investors thoroughly corrupted the auctions in multiple counties for two a half years, recruiting new  
15 members, intimidating newcomers, and assuming – as Sanchez did – that no one would ever be held  
16 accountable for rampant bid rigging. Guidelines sentences will send an important message across the  
17 industry, to those who considered themselves beyond the reach of the law, that bid rigging is  
18 unacceptable.

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

20 Section 3553(a)(6) directs the Court to consider “the need to avoid unwarranted sentence  
21 disparities among defendants with similar records who have been found guilty of similar conduct.” 18  
22 U.S.C. § 3553(a)(6). One point of comparison is Glenn Guillory, whom the Court recently sentenced to  
23 eighteen months in prison, a low-end Guidelines sentence. The trial evidence against Guillory showed  
24 that he had rigged approximately 20 properties (of which he bought 12). By comparison, Sanchez  
25 rigged more than twenty times as many properties, recruited others into the conspiracy, organized  
26 countless bid-rigging agreements and rounds, and ensured that thousands of bid-rigging payoffs were  
27 accurately recorded and collected. He deserves a much greater sentence.

28 //

1 At the same time, the government recognizes that Sanchez is not as culpable as Marr, the head of  
2 Community Fund. To account for the difference in relative culpability, the government recommends  
3 that Sanchez receive a sentence that is 24 months shorter than its recommendation for Marr, and that  
4 recommendation is for a mid-range sentence, rather than the high-end sentence sought for Marr.

### 5 **3. The Court Should Impose a Low-End Guidelines Fine**

6 In addition to a custodial sentence, a Guidelines fine is also necessary to reflect the seriousness  
7 of the offense and provide just punishment. Sanchez was a serial bid-rigger whose zeal for the crime did  
8 serious damage to the auctions in both counties during his two and a half years of participation in the  
9 conspiracies. While not a substitute for imprisonment, fines are also important punishment for  
10 economic crimes because they strike at the economic motive that often drives participation in the  
11 criminal activity in the first place. *See* U.S.S.G. §2R1.1, comment. (backg'd). The minimum \$20,000  
12 fine is inappropriate here because Sanchez was one of the most culpable participants in a conspiracy  
13 across both counties and has the ability to pay a Guidelines fine.

### 14 **4. No Downward Variance Is Warranted**

15 Sanchez's case does not present any reasons for a downward variance. While he may have little  
16 criminal history, this is a trait shared by most antitrust defendants (including defendants given  
17 Guidelines sentences in the real-estate cases) and is already accounted for by the criminal history  
18 calculation. This provides no reason to vary downward because the antitrust guideline accounts for such  
19 a typical offender. *See United States v. Carter*, 560 F.3d 1107, 1121-22 (9th Cir. 2009).

20 In assessing Sanchez's background and personal characteristics under 18 U.S.C. § 3553, Sanchez  
21 is relatively young, and his professional background suggests he will have adequate opportunities to  
22 earn a livelihood upon his release from prison. He was described at trial as a talented real-estate  
23 investor, and he is currently a partner in a real-estate partnership that owns nearly two dozen properties.  
24 PSR ¶ 75. He is generally healthy and suffers from no significant physical or mental problems. *Id.* ¶¶  
25 68-69.

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28 //

**CONCLUSION**

For the foregoing reasons, the United States respectfully requests that this Court sentence Sanchez to serve 37 months in prison and pay a fine of \$207,259 and a special assessment of \$200.

DATED: November 1, 2017

Respectfully submitted,

/s/ Alexis J. Loeb

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