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**FILED**  
APR 19 2010  
CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY          DEPUTY CLERK

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

15  
16 UNITED STATES OF AMERICA, )  
17 )  
Plaintiff, )  
18 )  
v. )  
19 )  
ANTHONY B. GHIO, )  
20 )  
Defendant. )  
21 )

No. CR-10-144 ESB

PLEA and COOPERATION AGREEMENT

22  
23 I.

24 INTRODUCTION

25  
26 A. **Scope of Agreement:** The Information to be filed in this  
27 case charges the defendant, ANTHONY B. GHIO, with participating in a  
28 conspiracy to suppress and restrain competition by rigging bids to

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

16 **B. Court Not a Party:** The Court is not a party to this Plea  
17 and Cooperation Agreement. Sentencing is a matter solely within the  
18 discretion of the Court, the Court is under no obligation to accept  
19 any recommendations made by the government, and the Court may in its  
20 discretion impose any sentence it deems appropriate, up to and  
21 including the statutory maximum stated in this Plea and Cooperation  
22 Agreement. If the Court should impose any sentence up to the  
23 maximum established by the statute, the defendant cannot, for that  
24 reason alone, withdraw his guilty plea, and he will remain bound to  
25 fulfill all of the obligations under this Plea and Cooperation  
26 Agreement. The defendant understands that neither the prosecutor,  
27  
28

1 defense counsel, nor the Court can make a binding prediction or  
2 promise regarding the sentence he will receive.

3  
4 **II.**

5 **DEFENDANT'S OBLIGATIONS**

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

13  
14 **B. Restitution:** The Mandatory Victim Restitution Act requires  
15 the Court to order restitution to the victims of certain offenses.  
16 The government and defendant agree to recommend that the Court order  
17 defendant to pay restitution in the amount of \$214,000. Payment  
18 should be at such times and in such amounts as ordered by the Court,  
19 and should be by cashier's or certified check made payable to the  
20 Clerk of the Court. The defendant understands that this Plea and  
21 Cooperation Agreement is voidable by the government if he fails to  
22 pay the restitution as ordered by the Court. Defendant further  
23 agrees that he will not seek to discharge any restitution obligation  
24 or any part of such obligation in any bankruptcy proceeding.

25  
26 **C. Special Assessment:** The defendant agrees to pay a special  
27 assessment of \$100 immediately before the sentencing hearing by  
28

1 delivering a check or money order to the United States Probation  
2 Office payable to the United States District Court.

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

22       If the defendant commits any crimes or if any of the  
23 defendant's statements or testimony prove to be knowingly false,  
24 misleading, or materially incomplete, or if the defendant otherwise  
25 violates this Plea and Cooperation Agreement in any way, the  
26 government will no longer be bound by its representations to the  
27  
28

1 defendant concerning the limits on criminal prosecution and  
2 sentencing as set forth herein. The determination whether the  
3 defendant has violated the Plea and Cooperation Agreement will be  
4 under a preponderance of the evidence standard. If the defendant  
5 violates the Plea and Cooperation Agreement, he shall thereafter be  
6 subject to prosecution for any federal criminal violation of which  
7 the government has knowledge, including but not limited to perjury,  
8 false statements, and obstruction of justice. Because disclosures  
9 pursuant to this Agreement will constitute a waiver of the Fifth  
10 Amendment privilege against compulsory self-incrimination, any such  
11 prosecution may be premised on statements and/or information  
12 provided by the defendant. Moreover, any prosecutions that are not  
13 time-barred by the applicable statute of limitations as of the date  
14 of this Agreement may be commenced in accordance with this  
15 paragraph, notwithstanding the expiration of the statute of  
16 limitations between the signing of this Agreement and the  
17 commencement of any such prosecutions. The defendant agrees to  
18 waive all defenses based on the statute of limitations or delay of  
19 prosecution with respect to any prosecutions that are not time-  
20 barred as of the date of this Agreement.

21  
22  
23 If it is determined that the defendant has violated any  
24 provision of this Agreement or if the defendant successfully moves  
25 to withdraw his plea: (1) all statements made by the defendant to  
26 the government or other designated law enforcement agents, or any  
27 testimony given by the defendant before a grand jury or other  
28

1 tribunal, whether before or after this Agreement, shall be  
2 admissible in evidence in any criminal, civil, or administrative  
3 proceedings hereafter brought against the defendant; and (2) the  
4 defendant shall assert no claim under the United States  
5 Constitution, any statute, Rule 11(f) of the Federal Rules of  
6 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or  
7 any other federal rule, that statements made by the defendant before  
8 or after this Agreement, or any leads derived therefrom, should be  
9 suppressed. By signing this Agreement, the defendant waives any and  
10 all rights in the foregoing respects.  
11

12 **E. Payment of Fine:** The defendant agrees to pay a criminal  
13 fine of the mandatory minimum of \$20,000 if so ordered by the Court.  
14 Defendant understands that the criminal fine ordered by the Court  
15 may be greater or lesser than the mandatory minimum based upon the  
16 defendant's ability to pay a criminal fine in addition to  
17 restitution as agreed upon and set forth in this Plea and  
18 Cooperation Agreement and as determined by the United States  
19 Probation Office. The government's recommendation with respect to  
20 any such criminal fine is set forth in paragraph III.(D) of this  
21 Plea and Cooperation Agreement.  
22  
23

24 **III.**

25 **THE GOVERNMENT'S OBLIGATIONS**

26 **A. Incarceration Range:** The government will recommend that  
27 the defendant be sentenced to the bottom of the applicable Guideline  
28

1 range for his offense, as determined by the United States Probation  
2 Office.

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

16  
17       **C. Reduction of Sentence for Cooperation:** The government  
18 agrees to recommend at the time of sentencing that the defendant's  
19 sentence of imprisonment be reduced to reflect his substantial  
20 assistance to the government in the investigation and prosecution of  
21 others, pursuant to U.S.S.G. § 5K1.1. The defendant understands  
22 that he must comply with paragraph II(D) of this Plea and  
23 Cooperation Agreement. The defendant understands that the  
24 government's recommended reduction in his sentence will depend upon  
25 the level of assistance the government determines that the defendant  
26 has provided. The defendant further understands that a motion  
27  
28

1 pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is not  
2 binding on the Court.

3 Other than as set forth above, the government agrees that any  
4 incriminating information provided by the defendant during his  
5 cooperation will not be used in determining the applicable Guideline  
6 range in his case, pursuant to U.S.S.G. § 1B1.8.  
7

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

12 **IV.**

13 **ELEMENTS OF THE OFFENSE**

14  
15 Had this case gone to trial, the government would have to prove  
16 beyond a reasonable doubt the following elements:

17 First, that the defendant entered into a conspiracy;

18 Second, that the conspiracy was an unreasonable restraint of  
19 trade; and

20 Third, that the conspiracy was in or affected interstate  
21 commerce in the United States.  
22

23 **V.**

24 **MAXIMUM SENTENCE**

25 **A. Maximum Penalty:** The maximum sentence the Court can impose  
26 for a violation of 15 U.S.C. § 1 is ten years incarceration; a fine  
27 in an amount equal to the greatest of (1) \$1,000,000, (2) twice the  
28



1 gross pecuniary gain the conspirators derived from the crime, or (3)  
2 twice the gross pecuniary loss caused to the victims of the crime by  
3 the conspirators; a three-year period of supervised release; and a  
4 special assessment of \$100.

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

11 VI.

12 **SENTENCING DETERMINATION**

13  
14 **A. Statutory Authority:** The defendant understands that the  
15 Court must consult the Federal Sentencing Guidelines (as promulgated  
16 by the Sentencing Commission pursuant to the Sentencing Reform Act  
17 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as  
18 modified by United States v. Booker and United States v. Fanfan,  
19 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account  
20 when determining a final sentence. The defendant understands that  
21 the Court will determine a non-binding and advisory guideline  
22 sentencing range for this case pursuant to the Sentencing  
23 Guidelines. The defendant further understands that the Court will  
24 consider whether there is a basis for departure from the guideline  
25 sentencing range (either above or below the guideline sentencing  
26 range) because there exists an aggravating or mitigating  
27  
28

1 circumstance of a kind, or to a degree, not adequately taken into  
 2 consideration by the Sentencing Commission in formulating the  
 3 Guidelines. The defendant further understands that the Court, after  
 4 consultation and consideration of the Sentencing Guidelines, must  
 5 impose a sentence that is reasonable in light of the factors set  
 6 forth in 18 U.S.C. § 3553(a).  
 7

8 **B. Stipulations Affecting Guidelines Calculations:** The  
 9 government and the defendant agree that there is no material dispute  
 10 as to the following sentencing guidelines variables and therefore  
 11 stipulate and agree to the following:

12	§ 2R1.1(a)	Base Offense Level	12
13	(b) (1)	Bid Rigging	+1
14	(b) (2) (B)	Volume of Commerce > \$1 million	+2
15		Total	15
16	(c) (1)	Fine 1 - 5% of \$5.9 million	

17  
 18 The Guidelines calculation results in a jail term of 18 to 24 months  
 19 and a fine between \$59,000 and \$295,000.

20 **1. Aggravating Role in Offense:** Because the defendant  
 21 served as an organizer, leader, manager, or supervisor with respect  
 22 to the criminal activity charged, pursuant to § 3E1.1(c), the  
 23 defendant's offense level is increased by 2 levels.  
 24

25 **2. Total Offense Level:** Pursuant to the foregoing  
 26 stipulations, defendant's total offense level is 17.

27 **3. Acceptance of Responsibility:** Pursuant to § 3E1.1 and  
 28

1 as described in more detail in paragraph III(B) above, the  
2 defendant's total offense level is decreased by three levels because  
3 of his acceptance of responsibility. The Adjusted Total Offense  
4 Level is therefore 14.

5  
6 **4. Criminal History:** The parties agree that the  
7 defendant's criminal history is to be determined by United States  
8 Probation.

9  
10 **5. Departures or Other Enhancements or Reductions:** The  
11 parties stipulate and agree that they will not seek or argue in  
12 support of any other specific offense characteristics, Chapter Three  
13 adjustments, or cross-references, other than those contemplated in  
14 the foregoing stipulations. Both parties stipulate and agree not to  
15 move for, or argue in support of, any departure from the Sentencing  
16 Guidelines, or any deviance or variance from the Sentencing  
17 Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct.  
18 738 (2005), except pursuant to U.S.S.G. § 5K1.1. If either party  
19 breaches this provision, the other party shall be relieved of all of  
20 its obligations under this Plea and Cooperation Agreement.

21  
22 **VII.**

23 **WAIVERS**

24 **A. Waiver of Constitutional Rights:** The defendant understands  
25 that by pleading guilty he is waiving the following constitutional  
26 rights: (a) to plead not guilty and to persist in that plea if  
27 already made; (b) to be tried by a jury; (c) to be assisted at trial  
28

1 by an attorney, who would be appointed if necessary; (d) to subpoena  
2 witnesses to testify on his behalf; (e) to confront and cross-  
3 examine witnesses against him; and (f) not to be compelled to  
4 incriminate himself.

5  
6 **B. Waiver of Appeal and Collateral Attack:** The defendant  
7 understands that the law gives him a right to appeal his conviction  
8 and sentence. He agrees as part of his plea, however, to give up  
9 the right to appeal the conviction and the right to appeal any  
10 aspect of the sentence imposed in this case so long as his sentence  
11 is no longer than the top of the Sentencing Guidelines range  
12 determined by the Court, consistent with the stipulations set forth  
13 above about the Sentencing Guidelines variables.

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

20  
21 If the defendant ever attempts to vacate his plea, dismiss the  
22 underlying charges, or reduce or set aside his sentence on any of  
23 the counts to which he is pleading guilty, the government shall have  
24 the right (1) to prosecute the defendant on any of the counts to  
25 which he pleaded guilty; (2) to reinstate any counts that may be  
26 dismissed pursuant to this Plea and Cooperation Agreement; and (3)  
27 to file any new charges that would otherwise be barred by this Plea  
28

1 and Cooperation Agreement. The decision to pursue any or all of  
2 these options is solely in the discretion of the United States  
3 Attorney's Office and the United States Department of Justice,  
4 Antitrust Division. By signing this Plea and Cooperation Agreement,  
5 the defendant agrees to waive any objections, motions, and defenses  
6 he might have to the government's decision. In particular, he  
7 agrees not to raise any objections based on the passage of time with  
8 respect to such counts, including, but not limited to, any statutes  
9 of limitation or any objections based on the Speedy Trial Act or the  
10 Speedy Trial Clause of the Sixth Amendment.  
11

12 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees  
13 to waive all rights under the "Hyde Amendment," Section 617, P.L.  
14 105-119 (Nov. 26, 1997), to recover attorneys' fees or other  
15 litigation expenses in connection with the investigation and  
16 prosecution of all charges in the above-captioned matter and of any  
17 related allegations.  
18

19 **VIII.**

20 **ENTIRE PLEA AND COOPERATION AGREEMENT**

21 Other than this Plea and Cooperation Agreement, no agreement,  
22 understanding, promise, or condition between the government and the  
23 defendant exists, nor will such agreement, understanding, promise,  
24 or condition exist unless it is committed to writing and signed by  
25

26 //

27 //

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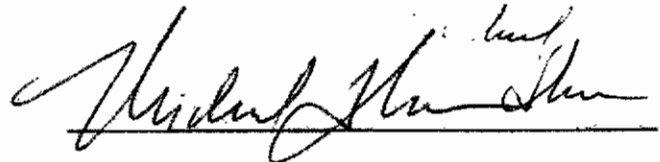
1 the defendant, counsel for the defendant, and counsel for the United  
2 States.

3 IX.

4 APPROVALS AND SIGNATURES

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

12  
13 DATED: March 30, 2010  
14 April 16, 2010



15 Michael Thorman, Attorney for  
16 Defendant

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

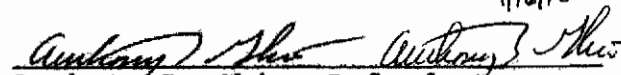
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27 //

1 am satisfied with the representation of my attorney in this case.

2

3 DATED: 3/30/10

4 <sup>4/16/10</sup>  
  
Anthony B. Ghio, Defendant

5

6

7 C. Attorneys for United States: The undersigned accept and  
8 agree to this Plea and Cooperation Agreement on behalf of the  
9 government.

10


11 DATED: April 16, 2010

BENJAMIN B. WAGNER  
United States Attorney

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13

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By: 

ROBIN R. TAYLOR  
RUSSELL L. CARLBERG  
Assistant U.S. Attorneys

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CHRISTINE A. VARNEY  
Assistant Attorney General

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By: 

BARBARA J. NELSON  
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ALBERT B. SAMBAT  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division

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