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8 IN THE UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	CASE NO. 2:10-CR-144 WBS
)	
12 Plaintiff,)	GOVERNMENT'S SENTENCING
)	MEMORANDUM AND MOTION FOR
13 v.)	DOWNWARD DEPARTURE PURSUANT TO
)	U.S.S.G. §5K1.1
14 ANTHONY B. GHIO,)	
)	DATE: September 12, 2016
)	TIME: 9:00 a.m.
16 Defendant.)	COURT: Hon. William B. Shubb
)	
17)	

21 I. INTRODUCTION

22 The United States of America hereby submits its sentencing memorandum for defendant
 23 Anthony Ghio. The government also moves, pursuant to Section 5K1.1 of the U.S. Sentencing
 24 Guidelines, for a downward departure from the guideline sentence under the Rule 11(c)(1)(B) plea
 25 agreement in this case based upon defendant Ghio's substantial assistance. The government respectfully
 26 recommends that the Court sentence defendant Ghio to a term of imprisonment of 10 months, followed
 27 by a period of supervised release, and order defendant to pay a criminal fine of \$20,000, a \$100 special
 28 assessment, and restitution in an amount to be determined.

1 II. BACKGROUND

2 On April 16, 2010, the Court accepted Ghio's guilty plea to the one-count Information in this
3 case charging him with conspiracy to rig bids in violation of 15 U.S.C. §1.

4 Defendant pleaded guilty to engaging in a conspiracy with the "Group" or the "Regulars," as
5 they referred to themselves, of other real estate investors purchasing foreclosed homes in San Joaquin
6 County. Instead of competing at the public auction, the members of the Group agreed not to bid against
7 each other for certain properties. They rigged the public auction by designating one person to bid, while
8 the rest refrained from bidding. By not bidding against each other, they kept the public auction prices
9 suppressed and prevented the mortgage holders from getting the highest competitive bid.

10 In exchange for not competing, the Group paid each other. At times, the bidder who wanted to
11 purchase the home paid the others a negotiated flat amount. At other times, the Group held private
12 auctions, or "round-robins," in which they re-auctioned the properties the designated bidder had "won"
13 at the public auction. The high bidder at the round-robin ultimately purchased the property by submitting
14 cashier's checks and filling out certain paperwork. The high bidder also owed payoffs to the losing
15 round-robin bidders. The payoff amount was the difference between the winning bid at the public
16 auction and the winning bid at the round-robin—money that should have gone to the mortgage holders.
17 In order to acquire title to the rigged property, certain paperwork had to be completed and mailed to the
18 trustee. The trustee relied on the accuracy of this paperwork in order to complete the foreclosure
19 process.

20 Ghio was a real estate investor who bought properties at foreclosure auctions in San Joaquin
21 County with Vanzetti, his partner. While only charged with bid rigging, Ghio and Vanzetti were
22 involved in both the Group's bid-rigging and mail-fraud conspiracies from the beginning. Ghio kept a
23 spreadsheet with a daily log of payoffs. He also took notes of the round-robin participants and bids and
24 calculated the payoff amounts. Together with Vanzetti, Ghio purchased approximately 116 properties,
25 valued at more than \$11.9 million through rigged auctions.¹ Ghio also made and received payoffs. The
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27 ¹ Under U.S.S.G. §1B1.8, self-incriminating information Ghio provided as part of his cooperation shall
28 not be used in determining the applicable guideline range, except to the extent provided in the plea
agreement. Here, the plea agreement calculation is based on a \$6 million volume of commerce.

1 conspiracies lasted into October 2009. The conspiracies ended when the investigation of this conduct
2 became public.

3 Prior to indictment, nine individuals, including defendant Ghio, pleaded guilty and agreed to
4 cooperate: (1) Anthony B. Ghio, (2) John R. Vanzetti, (3) Theodore B. Hutz, (4) Richard W. Northcutt,
5 (5) Yama Marifat, (6) Gregory L. Jackson, (7) Robert Rose, (8) Walter D. Olmstead, and (9) Kenneth A.
6 Swanger.

7 On December 7, 2011, five defendants were indicted in the Eastern District of California on one
8 count of bid-rigging (18 U.S.C. § 1) and one count of conspiracy to commit mail fraud (18 U.S.C.
9 § 1349): Wiley Chandler, Andrew Katakis, Donald Parker, Anthony Joachim, and the auctioneer W.
10 Theodore Longley. On May 8, 2013, a superseding indictment issued, adding an obstruction-of-justice
11 count against Katakis. After indictment but prior to trial, Chandler and Joachim pleaded guilty and
12 agreed to cooperate.

13 On March 11, 2014, after a five-week trial, Katakis and Parker were convicted of bid-rigging.
14 Katakis was also convicted of obstruction of justice. The jury hung on the mail fraud counts and
15 acquitted Longley. Subsequently, the Court granted Katakis a judgment of acquittal on the obstruction of
16 justice charge, and the Ninth Circuit affirmed. Katakis and Parker filed motions for new trials which are
17 still pending. The remaining defendants are scheduled for sentencing on September 12, 2016.

18 III. BASIS FOR SUBSTANTIAL ASSISTANCE REDUCTION

19 The government moves, pursuant to Section 5K1.1 of the U.S. Sentencing Guidelines, for a
20 downward departure from the guideline sentence under the Rule 11(c)(1)(B) plea agreement in this case.
21 The government values defendant Ghio's cooperation as warranting a 30% reduction for substantial
22 assistance to the investigation. Ghio was the first defendant to plead guilty in this investigation. Ghio sat
23 for interviews and provided extremely valuable information that significantly advanced the
24 investigation. Ghio's extensive notes became the blueprint for the investigation because they
25 documented detailed information about the inner workings of the conspiracy. Ghio's notes and
26 spreadsheet, together with the information Ghio provided, spelled out the full scope of the conduct and
27 allowed for specific calculations of each defendant's culpability measured in how many properties each
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1 member of the Group purchased and what payoffs each member paid and received. Ghio was a key trial
 2 witness on the stand for two days, and his spreadsheet and bid logs were important trial exhibits.

3 IV. SENTENCING RECOMMENDATION

4 The government respectfully recommends that the Court sentence defendant Ghio to a term of
 5 imprisonment of 10 months, followed by a period of supervised release, and order Ghio to pay a
 6 criminal fine of \$20,000, a \$100 special assessment, and restitution in an amount to be determined.

7 A. Guidelines Calculation

8 Paragraph VI(B) of the plea agreement in this case contains a jointly stipulated Guidelines
 9 calculation concluding that the resulting offense level is an offense level 17, resulting in a total adjusted
 10 offense level of 14 after a three-point reduction for acceptance of responsibility. The Government’s
 11 recommend term of incarceration of 10 months is 30% below the bottom of the 15 to 21 month range for
 12 offense level 14.

13 1. Volume of Commerce

14 Paragraph 54 of the PSR uses a volume of commerce figure of \$11.9 million to add 4 additional
 15 levels. However, the total \$11.9 million volume of commerce for Ghio and Vanzetti was only
 16 discovered through their cooperation. Under U.S.S.G. §1B1.8, self-incriminating information Ghio
 17 provided as part of his cooperation shall not be used in determining the applicable guideline range,
 18 except to the extent provided in the plea agreement. Therefore, the volume of commerce amount
 19 contained in the plea agreement, \$5.9 million, should be used as follows:

§2R1.1(a)	Base Offense Level	12
(b)(1)	Bid Rigging	+1
(b)(2)(B)	Volume of Commerce > \$1 million	+2
§3B1.1(c)	Aggravating role	+2
	Total	17

25 2. Role in the Offense

26 In paragraph 56, the PSR applies a 4-level role in the offense increase for organizers or leaders
 27 pursuant to U.S.S.G. §3B1.1(a). In Ghio’s plea agreement at paragraph VI(B)(1), the parties stipulated
 28 that there should be a 2-level role in the offense increase pursuant to U.S.S.G. §3B1.1(b) because Ghio

1 exercised some leadership in the conspiracy. While Ghio took copious notes of the payoffs and helped
2 orchestrate the conspiracy, he did not claim a larger share of the fruits of the crime nor satisfy other
3 factors under Application Note 4 to §3B1.1. Therefore, the parties continue to agree that 2-level role in
4 the offense increase contained in the plea agreement is the appropriate applicable adjustment based on
5 Ghio's role in the offense factors.

6 B. Custody

7 Based on a total offense level of 14, the Guideline range is within Zone D. Pursuant to U.S.S.G.
8 §5C1.1, a sentence in Zone D requires imprisonment. The government's position is that imprisonment
9 serves as a stronger deterrent in this case than alternative confinements. Ghio is being sentenced under
10 §2R1.1. Application Note five contained in the Commentary to §2R1.1 specifically states, "It is the
11 intent of the Commission that alternatives such as community confinement not be used to avoid
12 imprisonment of antitrust offenders." Furthermore, the background to §2R1.1 states,

13 Under the Guidelines, prison terms for these offenders should be much more common,
14 and usually somewhat longer, than typical under pre-guidelines practice. Absent
15 adjustments, the guidelines require some period of confinement in the great majority of
16 cases that are prosecuted, including all bid-rigging cases. The court will have the
17 discretion to impose considerably longer sentences within the guideline ranges.
18 Adjustments from Chapter Three, Part E (Acceptance of Responsibility) and, in rare
19 instances, Chapter Three, Part B (Role in the Offense), may decrease these minimum
20 sentences; nonetheless, in very few cases will the guidelines not require that some
21 confinement be imposed. Adjustments will not affect the level of fines.

22 The government recommends that a straight term of imprisonment should be imposed in this matter.

23 C. Fine

24 The Government recommends, as jointly agreed upon in paragraphs II(E) and III(D) in the plea
25 agreement, that the Court impose the minimum Guidelines fine for an antitrust offense pursuant to
26 U.S.S.G. § 2R1.1(c)(1) of \$20,000. The special instruction in §2R1.1(c)(1) relied upon in the PSR, states
27 that for an individual, the fine range shall be from one to five percent of the volume of commerce, but
28 not less than \$20,000. So, based on a volume of commerce of \$5.9 million attributed in the plea

1 agreement to Ghio, his fine range should be \$59,000 to \$295,000. In the plea agreement, the parties
2 calculated a fine range under §2R1.1(c)(1) from one to five percent of a \$5.9 million volume of
3 commerce and agreed to a fine of \$20,000, which is the minimum Guidelines fine under §2R1.1(c)(1).
4 The government intends to stand by that recommendation in light of the commitments made in the plea
5 agreement and in recognition of the substantial assistance provided by defendant Ghio. While Ghio may
6 have the means to pay a higher fine, the government's position is that a significant term of incarceration
7 and disgorgement through restitution serve as a stronger deterrent in this case than a higher monetary
8 penalty. As noted in the Guidelines, in determining the amount of the fine, the Court shall consider
9 restitution the defendant is obligated to make (§5E1.2(d)(4)), and restitution shall be satisfied first before
10 the payment of a fine (§5E1.1(c)). Defendant Ghio is obligated by the plea agreement to pay restitution
11 and this should be taken into consideration in imposing a fine.

12 V. 18 U.S.C. § 3553(a) FACTORS

13 The government's recommendation of 10 months of imprisonment is reasonable and not greater
14 than necessary in light of the factors articulated in 18 U.S.C. § 3553. The most compelling factors
15 weighing in favor of a sentence of imprisonment are the need for the sentence to reflect the seriousness
16 of the offense, promote respect for the law, and the need to afford adequate deterrence.
17 Ghio and the Group defrauded property holders and impacted not just the immediate victims but also the
18 community. Ghio profited from the charged conduct. A sentence including a term of imprisonment of 10
19 months will promote respect for the law at public foreclosure auctions and serve as a general deterrent to
20 other real estate investors in California who may be tempted to enrich themselves through similar
21 crimes. At the same time, a sentence greater than 10 months is not necessary in light of the factor
22 articulated in 18 U.S.C. § 3553. Ghio made a poor decision joining and participating in the Group that
23 rigged foreclosure auctions and lined their pockets with money that should have gone to loan holders.
24 However, the history and characteristics of Ghio, including his acceptance of responsibility and
25 cooperation with respect to the charged conduct, do not necessitate a term of imprisonment greater than
26 the 10 months.

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1 VI. CONCLUSION

2 For the foregoing reasons, defendant Ghio should be sentenced to a custodial sentence of 10
3 months, a \$100 special assessment, a \$20,000 criminal fine, and restitution in an amount to be
4 determined. We request that the determination of restitution be continued by a period “not to exceed 90
5 days after sentencing” pursuant to 18 U.S.C. §3663(d)(4) to allow time for counsel to finalize and review
6 restitution information.

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8 Dated: September 6, 2016

Respectfully submitted,

9 /s/ Kelsey Linnett

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