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8 Attorney for Defendant CASORSO

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

12 UNITED STATES OF AMERICA,  
13 Plaintiff,  
14 v.  
15 GREGORY CASORSO,  
16 Defendant.

No. CR 4:14-00580 PJH (DMR)

**DEFENDANT GREG CASORSO'S  
SENTENCING MEMORANDUM;  
REQUEST FOR EVIDENTIARY  
HEARING**

Date: November 15, 2017  
Time: 2:30 p.m.  
Court: 3, Chief Judge Hamilton

19  
20 Greg Casorso comes before this court for sentencing following his conviction at trial of  
21 one count of bid-rigging.

22 **I. INTRODUCTION**

23 Mr. Casorso submits that an appropriate sentence is 12 months of electronic monitoring.  
24 He objects to the Probation Department's recommended sentence of 24 months because it is  
25 based on an erroneous calculation of the sentencing guidelines, disproportionate, and  
26 unsupported by consideration of the relevant sentencing factors under 18 U.S.C. § 3553.  
27 Properly calculated, the requested 12 month sentence is in the middle of the range.

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1    **II. BACKGROUND**

2       **A. Procedural Background**

3       Mr. Casorso is one of dozens of people indicted by the Antitrust Division of the  
4 United States Department of Justice for bid-rigging at public foreclosure auctions of real  
5 property throughout the Bay Area. Mr. Casorso was an employee of Community Fund  
6 LLC, the real estate company owned by co-defendant Mike Marr. Marr, Javier Sanchez,  
7 Greg Casorso, and Victor Marr were charged with bid-rigging at foreclosure auctions—  
8 Mr. Casorso was charged for his participation in Alameda County, and with mail fraud  
9 charged for the same conduct in another count.

10       Mr. Casorso has never denied the conduct that led to his conviction in this case.  
11 Rather, he has always contended that his conduct was not anti-competitive and should  
12 therefore be judged under the rule of reason, rather than under the *per se* rule. The  
13 defendants made that argument to this Court, see Dkt. 66, and included substantial  
14 evidence that his (and others) conduct in agreeing to participate in rounds did not actually  
15 suppress competition. The defense submitted evidence of the analysis of Jeffrey Andrien,  
16 an economist, who examined all of the relevant data and concluded that there was in fact  
17 no suppression of auction prices as a result of the bid-rigging conduct. Dkt. 66-1 at ¶33.  
18 Given pre-existing Ninth Circuit precedent, this Court had little choice but to deny the  
19 motion. Dkt. 135. The defense also submitted a proposed jury instructions and a  
20 supporting brief requesting a rule of reason instruction, which were denied. Dkts. 212,  
21 231, 288. The rule of reason claim will obviously be renewed before the Ninth Circuit  
22 by appellate counsel. After Mr. Marr's son Victor was severed, Mr. Marr, Javier  
23 Sanchez, and Greg Casorso all proceeded to trial and guilty verdicts were convicted on  
24 June 2, 2017. Mr. Marr's son Victor was later acquitted.

25       **B. The Offense**

26       Before, during, and after trial, Mr. Casorso has never disputed, and in fact has  
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28

1 readily admitted, to what he actually did that made him guilty under the per se rule. In  
2 February, 2011 he voluntarily met with the FBI, without counsel or a proffer agreement,  
3 and for the next nine hours described in detail what he did during the foreclosure  
4 auctions. He did not deny reaching agreements to stop bidding, or participating in rounds  
5 following the public auctions, after which the winner of the round agreed to pay the  
6 various round participants. As this Court is well aware, having presided over multiple  
7 trials in this and related cases, many people engaged in this conduct (which is also  
8 reflected in the more than 50 individuals who were indicted), and thousands of properties  
9 were purchased over the years by the participants in these rounds in the various counties  
10 in the Bay Area and Sacramento.

### 11 **C. The Defendant**

12 Greg Casorso is a high school graduate who attended some college, though he  
13 never obtained a degree. He is the oldest of 6 siblings. His family life was “austere” and  
14 emphasized reading and school work. He was married for 5 years and divorced his wife  
15 over 12 years ago because of her alcoholism. They had no children.  
16

17 For 25 years he owned and operated a construction company. In March of 2008,  
18 he was hired by Mike Marr and began working on Mr. Marr’s behalf at the Alameda  
19 County foreclosure auctions. ¶ 77.

### 20 **III. ARGUMENT**

21 The Sentencing Guidelines range reported in the final Presentence Report  
22 (“PSR”) is in error because: 1) it does not award Mr. Casorso a 2 level reduction for his  
23 acceptance of responsibility; and 2) it increases his base offense level based on the  
24 government’s erroneous and unsupported claim that the affected volume of commerce is  
25 over \$170. When the sentencing guidelines are correctly calculated, it results in a  
26 sentencing guideline range of 8-14 months.

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1                   **A. The Court Should Recognize Mr. Casorso’s Timely, Pre-Trial Acceptance**  
2                   **of Responsibility and Reduce His Total Offense Level Accordingly**

3                   The probation office’s draft presentence report (“PSR”) declined to make a downward  
4 adjustment to Mr. Casorso’s offense level for acceptance of responsibility. Defendant submits  
5 that an adjustment is warranted given that he has always admitted the facts constituting the crime  
6 charged, first over 7 years ago during his lengthy FBI interview, and more recently during his  
7 testimony at trial, where he admitted on both direct and cross examination that he engaged in  
8 agreements to stop bidding at the public auctions.

9                   The PSR states that he has not “clearly demonstrated” acceptance because he put the  
10 government to its proof at trial and denied the essential elements. That is not true. Mr. Casorso  
11 did put the government to its proof, but he did not deny the essential elements of bid-rigging;  
12 rather, he admitted them during his testimony. In fact, the government’s closing argument cited  
13 his trial testimony repeatedly as admissions of guilt.

14                   The Application Note to U.S.S.G. §3E1.1 establishes that, given his proposals to the  
15 government as described above, Mr. Casorso is entitled to a downward adjustment for  
16 acceptance of responsibility. Specifically, Application Note 2 states that conviction by trial does  
17 not automatically preclude a defendant from consideration for an acceptance reduction, and that  
18 a defendant “may clearly demonstrate an acceptance of responsibility for his criminal conduct  
19 even though he exercises his constitutional right to a trial.” The Note continues:

20                   This may occur, for example, where a defendant goes to trial to  
21 *assert and preserve issues that do not relate to factual guilt* (e.g.,  
22 to make a constitutional challenge to a statute or a challenge to the  
23 applicability of a statute to his conduct.) In each such instance,  
24 however, a determination that a defendant has accepted  
25 responsibility will be based primarily upon pre-trial statements and  
26 conduct.

27 *Ibid.* (Emphasis added)

28                   Mr. Casorso’s pretrial statements and conduct show unequivocally that, prior to trial, he  
(1) actually admitted his factual guilt of the bid rigging charge under the legal theory adopted by

1 the Court, and (2) proceeded to trial to preserve challenge the per se rule on appeal. His  
2 statements and conduct clearly demonstrate his acceptance of responsibility for the offense under  
3 the precise scenario described in Application Note 2. Mr. Casorso is therefore entitled to an  
4 acceptance reduction.

5 **B. Defendant Objects to the Volume of Commerce Adjustment And**  
6 **Requests An Evidentiary Hearing To Resolve The Issue**

7 The Sentencing Guidelines for Antitrust offenses adjust the offense level  
8 according to the “volume of commerce attributable to the defendant.” Sentencing  
9 Guidelines §2R1.1(b)(2). In this case, the PSR adopted without question the  
10 government’s conclusion that the affected volume of commerce as to Mr. Casorso is  
11 \$17,058.503.00. If adopted, this volume of commerce amount would result in a four-  
12 level increase in Mr. Casorso’s total offense level. ¶ 40 (four levels added if volume was  
13 more than \$10 million but less than \$50 million).

14  
15 This figure was not provided by the government to Probation or the defense until  
16 October 12, 2017, in the government’s objections to the draft PSR.<sup>1</sup>

17  
18 ***1. There Should Be No Volume Of Commerce Adjustment Because The***  
19 ***Defendants’ Conduct Did Not Actually Suppress Prices***

20 Volume of commerce is essentially a proxy used for the presumed harm in antitrust cases  
21 adjudged under a *per se* theory of liability.  
22 Thus, volume of commerce enhancements are typically an estimate based on generalized  
23 assumptions regarding the probable harm created by anticompetitive conduct.

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24 <sup>1</sup> The government’s objections to the draft PSR were lodged a week before the  
25 undersigned counsel commenced trial in a mortgage fraud case in the Eastern District. United  
26 States v. Singh et al., No. 13-cr-00084 GEB. Verdicts were not rendered in that case until earlier  
27 today; defense counsel has just not had time to try and locate the documents underlying the  
28 government’s proposed volume of commerce adjustment to determine its accuracy but will  
endeavor to do so before sentencing.

1 In this case, the defense offered clear statistical evidence that the defendants' agreements  
2 to stop bidding and participate in rounds during the time period charged in the indictment *did not*  
3 *suppress prices* in either Alameda (or Contra Costa) county. Jeffrey Andrien's analysis was a  
4 straightforward analysis of auction sale prices during the time period charged by the government  
5 in its indictment. The analysis demonstrates that the defendant's conduct did not suppress  
6 auction prices in those counties during the charged time frame. In fact, Andrien's analysis also  
7 demonstrates that auction prices actually declined following the termination of the charged  
8 conspiracy, rather than increasing as should have happened if the rounds were suppressing  
9 competition. That evidence is still totally un rebutted by the government.

10 The Guidelines' presumption of anticompetitive harm cannot overcome the  
11 uncontradicted evidence in this case from Mr. Andrien. Mr. Casorso therefore objects to any  
12 volume of commerce adjustment unless and until the government proves at an evidentiary  
13 hearing that sales of particular properties were "affected" by the bid-rigging conspiracy. Even if  
14 the volume of commerce number is required under the Guidelines, Mr. Andrien's evidence of  
15 lack of anticompetitive damages should be considered as basis for a guidelines departure because  
16 the volume of commerce number from application of the Guidelines overstates the seriousness of  
17 the offense.

18 ***2. If The Court Imposes A Volume Of Commerce Adjustment, It***  
19 ***Should Be Calculated Based Using The Amounts Paid In Rounds***  
20 ***When Mr. Casorso Was The Winning Bidder, Not The Amounts***  
21 ***Paid At the Public Auction***

22 The Commentary to Guideline 2R1.1 observes that "[t]he offense levels are not  
23 based directly on the damage caused or profit made by the defendant because damages  
24 are *difficult and time consuming to establish*. The volume of commerce is an acceptable  
25 and more readily measurable substitute." (emphasis added).

26 Here, unlike in most bid-rigging cases, the court does not need a "substitute"  
27 because it actually has readily available an exact measure of the "damage caused or profit  
28 made" because of the conspiracy. Because of the detailed records of round payments

1 kept by Community Fund and others, the government knows exactly how much money  
2 the various round participants were willing and did pay for the properties at issue in  
3 addition to that paid at the public auction.

4 Accordingly, the volume of commerce should be calculated as the total amount of  
5 round payments in rounds where Mr. Casorso was the winning bidder. That amount is  
6 precisely the amount of commerce that was “affected” by the charged conspiracy. The  
7 beneficiary banks already received the monies paid at the public auction, so it makes no  
8 logical or legal sense to use that amount in addition to the round payments as having been  
9 “affected” by the illegal activity. The amounts paid at the public auction were only  
10 “affected” insofar as additional amounts were subsequently paid for rounds. According  
11 to the government’s theory of the case (that the amounts paid in the rounds should have  
12 gone to the beneficiaries), the “affect” of the conspiracy should be measured by the  
13 difference between the auction price and the round payment.

14 If the court were to adopt defendants’ suggested method of calculating the volume  
15 of commerce, based on the government’s figures, the volume of commerce attributable to  
16 the defendant would be slightly over \$1 million, resulting in a 2-level adjustment rather  
17 than the 4-level adjustment suggested by the government.

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21 ***3. Defendant Requests An Evidentiary Hearing To Determine the***  
22 ***Volume of Commerce***

23 If the court intends to impose a volume of commerce adjustment, defendant  
24 requests an evidentiary hearing at which the government must prove the appropriate  
25 volume of commerce .

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**C. Final Offense Level**

Defendant thus requests that the Court adopt the following Guideline calculation:

Base Offense Level (§ 2R1.1(a))	12
Submission of non-competitive bids (§ 2R1.1(b)(1))	1
<u>Acceptance of Responsibility (§ 3E1.1(a))</u>	<u>-2</u>
	11

An offense level of 11, at a Criminal History Category of I, results in a Guideline range of 8-14 months.

**D. The Applicable Sentencing Factors Warrant a Sentence of No More Than 12 Months Served on Electronic Monitoring**

*1. General Sentencing Principles Justify the Requested Sentence*

Congress has directed that the district courts “shall impose a sentence sufficient, but not greater than necessary, to comply with [the purposes of sentencing].” 18 U.S.C. § 3553(a); *Pepper v. United States*, 131 S.Ct. 1229, 1242 (2011) (sentencing judge’s “overarching duty under § 3553(a) is to impose a sentence sufficient, but not greater than necessary”); *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (*en banc*) (same). The Supreme Court has also directed that the punishment must “fit the offender and not merely the crime.” *Pepper*, 131 S.Ct. at 1240. Sentencing, therefore, is “an art, not to be performed as a mechanical process but as a sensitive response to a particular person who has committed a particular crime.” *United States v. Harris*, 679 F.3d 1179 (9th Cir. 2012). And the sentencing guidelines are not only merely advisory, but also are to be given no more weight than any other factor under § 3553. *Carty*, 520 F.3d at 991 (citing *Kimbrough v. United States*, 522 U.S. 85 (2007)).

Finally, Congress directed the Sentencing Commission to “insure that the guidelines reflect the general appropriateness of imposing a sentence *other than imprisonment* in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.” 28 U.S.C. § 994 (emphasis added).

Given this directive, as a first-time offender with no violent criminal history, Mr. Casorso is an appropriate candidate for probation. The advisory guideline range here offers little help



1 because that range is exclusively driven by the volume of commerce, a proxy for competitive  
2 harm that was never proven under the government's *per se* theory of liability. This case is thus  
3 one of those where the Court can and should consider the factors discussed below to impose a just  
4 and righteous sentence on Mr. Casorso, and such a sentence does not require a lengthy term of  
5 imprisonment, if any at all.

6 **2. Applicable Sentencing Factors Justify the Requested Sentence**

7 Under Section 3553, the Court “shall impose a sentence that is sufficient, but not greater  
8 than necessary, to comply with the purposes [of the] . . . need for the sentence imposed:

- 9 (A) to reflect the seriousness of the offense, to promote respect for the law, and to  
10 provide just punishment for the offense;  
11 (B) to afford adequate deterrence to criminal conduct;  
12 (C) to protect the public from further crimes of the defendant; and  
13 (D) to provide the defendant with the needed educational or vocational training,  
14 medical care, or other correctional treatment in the most effective manner.”

15 18 U.S.C. § 3553(a)(2)(A)-(D). In determining the minimally sufficient sentence, courts consider  
16 these purposes, as well as “the nature and circumstances of the offense and the history and  
17 characteristics of the defendant,” (§ 3553(a)(1)), “the kinds of sentences available” (§ 3553(a)(3)),  
18 “the need to avoid unwanted sentence disparities” (§3553(a)(6)), and “the need to provide  
19 restitution” (§ 3553(a)(7)).

20 The court must also consider the applicable guideline ranges, but those guidelines are  
21 advisory under *United States v. Booker*, 543 U.S. 245, 756 (2005). 18 U.S.C. § 3553(a)(4). And  
22 the sentencing guidelines are not only merely advisory, but also are to be given no more weight  
23 than any other factor under Section 3553. *Kimbrough v. United States*, 522 U.S. 85 (2007). In  
24 short, the sentencing court retains significant discretion to “tailor the sentence in light of other  
25 statutory concerns as well.” *Id.*

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1                   **a. The Need for the Sentence to Reflect the Seriousness of the Crime**

2           Both to avoid disparities, *see* § 3553(a)(6)), and to ensure that the sentence adequately  
3 reflect the seriousness of the offense, the Court should take into account the sentences imposed in  
4 the numerous other bid-rigging cases in this district, as well as those imposed throughout the  
5 nation.

6           Given the sentences received by other defendants in this district, a sentence of more than  
7 12 months served on electronic house arrest would both exaggerate the seriousness of the offense  
8 and result in an unwarranted disparity. Most defendants who have been sentenced so far – mostly  
9 defendants who pled guilty – have received sentences of home confinement or minimal jail terms.

10           Of those defendants who have exercised their right to trial, the highest sentence was  
11 imposed by Judge Donato on Alvin Florida, who received a sentence of 21 months. Al Florida  
12 started doing rounds in Alameda County as far back as the 1970s. By an exponential factor, Mr.  
13 Florida entered more agreements to do rounds on properties in the last 40 years than Mr. Casorso  
14 did on behalf of his employer during the less than two years he participated in the rounds.

15           It would be an injustice in the extreme to sentence Greg Casorso, an hourly employee who  
16 participated in rounds only on behalf of his employer, to a sentence exceeding (if the court were  
17 to adopt the government or Probation recommendation) the sentence received by Al Florida.  
18 Moreover, Mr. Casorso never intimidated or threatened anyone. His participation in the rounds  
19 was strictly professional and businesslike. Unfortunately, the same cannot be said for Mr.  
20 Florida, who intimidated and threatened other auction attendees to get his way.

21           And Robert Rasheed received a sentence of 14 months. Again, Mr. Rasheed participated  
22 in rounds for many more years than Mr. Casorso. And he did not do so for just an hourly wage  
23 but profited handsomely.

24           A 12 month sentence would also be double the national average. The most recent  
25 Sentencing Commission statistics available show that the “average” or mean sentence imposed for  
26 anti-trust offenses by offenders with a Criminal History Category of I, just like Mr. Casorso, is  
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1 only 6 months imprisonment. See Exhibit A (Table 14--LENGTH OF IMPRISONMENT FOR  
2 OFFENDERS IN EACH CRIMINAL HISTORY CATEGORY BY PRIMARY OFFENSE  
3 CATEGORY, available at [www.ussc.gov/sites/default/files/pdf/research-and-publications/  
4 annual-reports-and-sourcebooks/2016/Table14.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2016/Table14.pdf)). Mr. Casorso is not the type of offender  
5 whose conduct and character require more than double the national average.  
6

7 **b. The Need for the Sentence to Afford Adequate Deterrence**

8 A lengthy term of imprisonment is not necessary to deter Mr. Casorso from committing  
9 an offense in the future. The offense conduct was committed in a situation that is unlikely to  
10 repeat itself. The “rounds” had been going on at the foreclosure years before Mr. Casorso got  
11 involved in the business. Although he has attended many foreclosure auctions since the January  
12 2011 raid, he has not participated in any further agreements to stop bidding or any rounds.  
13

14 **c. The Need to Protect the Public From Further Crimes**

15 Mr. Casorso is a 61year old man who has maintained steady employment all of his life.  
16 He has no criminal history. He is not a risk to commit further crimes.

17 **d. The Kinds of Sentences Available**

18 When determining the minimally sufficient sentence, courts are permitted to consider all  
19 types of available sentencing options, even when the advisory guideline range includes a lengthy  
20 period of incarceration. 18 U.S.C. § 3553(a)(3); *Gall v. United States*, 552 U.S. 38 (2007). Mr.  
21 Casorso’s recommended sentence of no more than 12 months house arrest, the mid-level of the  
22 appropriate guideline range, is appropriate in light of the offense conduct, personal background  
23 and character, and the general sentencing principles discussed above.

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**CONCLUSION**

For the forgoing reasons and based on the record herein, Mr. Casorso requests a sentence of no more than 12 months served on electronic house arrest. If the Court ultimately decides a term of incarceration is required, he requests he be designated to either Atwater (Camp) or Lompoc (Camp).

Dated: November 8, 2017

/s/Erik Babcock  
ERIK BABCOCK

Attorney for GREG CASORSO

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