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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION

**CR11-00424**

CW

17 UNITED STATES OF AMERICA ) Criminal No.  
18 )  
19 ) **INFORMATION**  
20 )  
21 v. )  
22 ) VIOLATIONS: 15 U.S.C. § 1 –  
23 ) Bid Rigging (Counts One & Three);  
24 ) 18 U.S.C. § 1349 – Conspiracy to  
25 ) Commit Mail Fraud (Counts Two &  
26 ) Four)  
27 )  
28 )  
29 )  
30 )

31 The United States of America, acting through its attorneys, charges:  
32 BRIAN MCKINZIE,  
33 the defendant herein, as follows:

34 BACKGROUND

35 1. When California homeowners default on their mortgages, the lender or loan  
36 servicer can institute foreclosure proceedings through a non-judicial public foreclosure auction.  
37 These public auctions typically take place at or near the county courthouse. At the auction an  
38 auctioneer sells the property to the bidder offering the highest purchase price. Proceeds from the

1 sale are then used to pay off the mortgage and other debt attached to the property. Proceeds  
2 remaining from the sale are then paid to the homeowner.

3 COUNT ONE: 15 U.S.C. § 1 – Bid Rigging (Alameda County)

4 THE COMBINATION AND CONSPIRACY

5 2. Beginning as early as November 2008 and continuing until in or about January  
6 2011, the defendant BRIAN MCKINZIE and co-conspirators entered into and engaged in a  
7 combination and conspiracy to suppress and restrain competition by rigging bids to obtain  
8 selected real estate offered at Alameda County, California public real estate foreclosure auctions  
9 in the Northern District of California, in unreasonable restraint of interstate trade and commerce,  
10 in violation of the Sherman Act, Title 15, United States Code, Section 1.

11 3. The charged combination and conspiracy consisted of a continuing agreement,  
12 understanding, and concert of action among the defendant and co-conspirators, the substantial  
13 terms of which were:

14 a. to suppress competition by agreeing to refrain from full competitive  
15 bidding against each other to obtain selected real estate offered at Alameda County, California  
16 public real estate foreclosure auctions;

17 b. to make payoffs to one another in return for suppressing competition for  
18 selected real estate offered at public real estate foreclosure auctions; and

19 c. to obtain title to selected real estate sold at non-competitive, rigged prices.

20 4. For the purpose of forming and carrying out the charged combination and  
21 conspiracy, the defendant and co-conspirators did those things that they combined and conspired  
22 to do, including, among other things:

23 a. agreeing, during meetings, conversations, and communications, to rig bids  
24 to obtain selected real estate offered at Alameda County, California public real estate foreclosure  
25 auctions;

26 b. designating, in various ways, which conspirator would win the selected  
27 real estate at the public real estate foreclosure auctions for the group of conspirators;

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INFORMATION – BRIAN MCKINZIE – 2

1 c. bidding at non-competitive amounts or refraining from bidding for the  
2 selected real estate at the public real estate foreclosure auctions;

3 d. in some instances, engaging in direct negotiations with one or more  
4 co-conspirators to pay one another not to compete for selected real estate at the public real estate  
5 foreclosure auctions;

6 e. in many other instances, holding secret private auctions, at or near the  
7 courthouse steps where the public auctions were held, open only to members of the conspiracy,  
8 to rebid for the selected real estate obtained at the public real estate foreclosure auctions;

9 f. awarding the selected real estate to the conspirators who submitted the  
10 highest bids at the private auctions; and

11 g. distributing the proceeds of the private auctions, including cash payoffs,  
12 based upon a predetermined formula agreed upon by the members of the conspiracy.

13 5. Various entities and individuals, not made defendants in this Information,  
14 participated as co-conspirators in the offenses charged in this Information and performed acts  
15 and made statements in furtherance of them.

16 TRADE AND COMMERCE

17 6. During the period covered by this Information, the business activities of the  
18 defendant and co-conspirators that are the subject of this Information were within the flow of,  
19 and substantially affected, interstate trade and commerce. For example, mortgage holders  
20 located in states other than California received proceeds from the public real estate foreclosure  
21 auctions that were subject to the bid-rigging conspiracy.

22 JURISDICTION AND VENUE

23 7. The combination and conspiracy charged in this Information was carried out, in  
24 part, in the Northern District of California, within the five years preceding the filing of this  
25 Information.

26 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

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1 COUNT TWO: 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud (Alameda County)

2 THE CONSPIRACY

3 8. Beginning as early as November 2008 and continuing until in or about January  
4 2011 in Alameda County in the Northern District of California, the defendant BRIAN  
5 MCKINZIE and co-conspirators did willfully and knowingly combine, conspire, and agree with  
6 each other to violate Title 18, United States Code, Section 1341, namely, to knowingly devise  
7 and intend to devise a material scheme or artifice to defraud financial institutions and others and  
8 to obtain money and property by materially false and fraudulent pretenses and, for the purpose of  
9 executing or attempting to execute such scheme or artifice, to knowingly use and cause to be  
10 used the United States Postal Service or any private or commercial interstate carrier, in violation  
11 of Title 18, United States Code, Section 1349.

12 9. It was an object of the conspiracy that the defendant and his co-conspirators  
13 suppress competition by acquiring title to selected real estate at prices lower than would have  
14 resulted from fully competitive auctions, carried out by making payoffs to co-conspirators  
15 through direct negotiations or by holding second, private auctions and dividing the profits of the  
16 scheme (the difference between the public auction prices and the prices paid at the private  
17 auctions) among themselves. In other words, the defendant and co-conspirators manipulated the  
18 sales price of selected real estate, causing false, artificially low sales prices to be reported and  
19 paid to victims of the scheme. It was a further object of the conspiracy that the defendant and  
20 co-conspirators obtain title to the fraudulently acquired real estate, including recorded proof of  
21 title, in order to permit later sale of the fraudulently acquired real estate and receive additional  
22 profits from those sales.

23 MEANS AND METHODS

24 The principal means and methods used to accomplish the conspiracy were as follows:

25 10. Each and every allegation contained in Paragraphs 4 and 5 of Count One of this  
26 Information is here realleged as if fully set forth in this Count.

27 11. For the purpose of executing the scheme or artifice to defraud, the defendant and  
28 co-conspirators did knowingly cause Trustee's Deeds Upon Sale for the fraudulently obtained

1 real estate to be sent or delivered by the United States Postal Service or a private or commercial  
2 interstate carrier. These mailings were foreseeable to the defendant in the ordinary course of  
3 business.

4 OVERT ACTS

5 12. In addition to causing the use of the United States Postal Service or a private or  
6 commercial interstate carrier in furtherance of the conspiracy and to effect the illegal objects  
7 thereof, the defendant and co-conspirators, in the manner described in Count One, Paragraph 4,  
8 and for the purpose of carrying out the charged conspiracy, on multiple occasions paid out and  
9 received substantial sums in payoffs in exchange for their agreement not to compete at the  
10 Alameda County, California public real estate foreclosure auctions in the Northern District of  
11 California.

12 JURISDICTION AND VENUE

13 13. The combination, conspiracy, and agreement to violate Title 18, United States  
14 Code, Section 1341 charged in this Information was carried out, in part, in the Northern District  
15 of California, within the five years preceding the filing of this Information.

16 ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1349.

17 COUNT THREE: 15 U.S.C. § 1 – Bid Rigging (Contra Costa County)

18 THE COMBINATION AND CONSPIRACY

19 14. Beginning as early as November 2008 and continuing until in or about November  
20 2009, the defendant BRIAN MCKINZIE and co-conspirators entered into and engaged in a  
21 combination and conspiracy to suppress and restrain competition by rigging bids to obtain  
22 selected real estate offered at Contra Costa County, California public real estate foreclosure  
23 auctions in the Northern District of California, in unreasonable restraint of interstate trade and  
24 commerce, in violation of the Sherman Act, Title 15, United States Code, Section 1.

25 15. The charged combination and conspiracy consisted of a continuing agreement,  
26 understanding, and concert of action among the defendant and co-conspirators, the substantial  
27 terms of which were:

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1 a. to suppress competition by agreeing to refrain from full competitive  
2 bidding against each other to obtain selected real estate offered at Contra Costa County,  
3 California public real estate foreclosure auctions;

4 b. to make payoffs to one another in return for suppressing competition for  
5 selected real estate offered at public real estate foreclosure auctions; and

6 c. to obtain title to selected real estate sold at non-competitive, rigged prices.

7 16. For the purpose of forming and carrying out the charged combination and  
8 conspiracy, the defendant and co-conspirators did those things that they combined and conspired  
9 to do, including, among other things:

10 a. agreeing, during meetings, conversations, and communications, to rig bids  
11 to obtain selected real estate offered at Contra Costa County, California public real estate  
12 foreclosure auctions;

13 b. designating, in various ways, which conspirator would win the selected  
14 real estate at the public real estate foreclosure auctions for the group of conspirators;

15 c. bidding at non-competitive amounts or refraining from bidding for the  
16 selected real estate at the public real estate foreclosure auctions;

17 d. in some instances, engaging in direct negotiations with one or more  
18 co-conspirators to pay one another not to compete for selected real estate at the public real estate  
19 foreclosure auctions;

20 e. in many other instances, holding secret private auctions, at or near the  
21 courthouse steps where the public auctions were held, open only to members of the conspiracy,  
22 to rebid for the selected real estate obtained at the public real estate foreclosure auctions;

23 f. awarding the selected real estate to the conspirators who submitted the  
24 highest bids at the private auctions; and

25 g. distributing the proceeds of the private auctions, including cash payoffs,  
26 based upon a predetermined formula agreed upon by the members of the conspiracy.

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1 17. Various entities and individuals, not made defendants in this Information,  
2 participated as co-conspirators in the offenses charged in this Information and performed acts  
3 and made statements in furtherance of them.

4 TRADE AND COMMERCE

5 18. During the period covered by this Information, the business activities of the  
6 defendant and co-conspirators that are the subject of this Information were within the flow of,  
7 and substantially affected, interstate trade and commerce. For example, mortgage holders  
8 located in states other than California received proceeds from the public real estate foreclosure  
9 auctions that were subject to the bid-rigging conspiracy.

10 JURISDICTION AND VENUE

11 19. The combination and conspiracy charged in this Information was carried out, in  
12 part, in the Northern District of California, within the five years preceding the filing of this  
13 Information.

14 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

15 COUNT FOUR: 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud (Contra Costa County)

16 THE CONSPIRACY

17 20. Beginning as early as November 2008 and continuing until in or about November  
18 2009 in Contra Costa County in the Northern District of California, the defendant BRIAN  
19 MCKINZIE and co-conspirators did willfully and knowingly combine, conspire, and agree with  
20 each other to violate Title 18, United States Code, Section 1341, namely, to knowingly devise  
21 and intend to devise a material scheme or artifice to defraud financial institutions and others and  
22 to obtain money and property by materially false and fraudulent pretenses and, for the purpose of  
23 executing or attempting to execute such scheme or artifice, to knowingly use and cause to be  
24 used the United States Postal Service or any private or commercial interstate carrier, in violation  
25 of Title 18, United States Code, Section 1349.

26 21. It was an object of the conspiracy that the defendant and his co-conspirators  
27 suppress competition by acquiring title to selected real estate at prices lower than would have  
28 resulted from fully competitive auctions, carried out by making payoffs to co-conspirators



1 through direct negotiations or by holding second, private auctions and dividing the profits of the  
2 scheme (the difference between the public auction prices and the prices paid at the private  
3 auctions) among themselves. In other words, the defendant and co-conspirators manipulated the  
4 sales price of selected real estate, causing false, artificially low sales prices to be reported and  
5 paid to victims of the scheme. It was a further object of the conspiracy that the defendant and  
6 co-conspirators obtain title to the fraudulently acquired real estate, including recorded proof of  
7 title, in order to permit later sale of the fraudulently acquired real estate and receive additional  
8 profits from those sales.

9 MEANS AND METHODS

10 The principal means and methods used to accomplish the conspiracy were as follows:

11 22. Each and every allegation contained in Paragraphs 16 and 17 of Count Three of  
12 this Information is here realleged as if fully set forth in this Count.

13 23. For the purpose of executing the scheme or artifice to defraud, the defendant and  
14 co-conspirators did knowingly cause Trustee's Deeds Upon Sale for the fraudulently obtained  
15 real estate to be sent or delivered by the United States Postal Service or a private or commercial  
16 interstate carrier. These mailings were foreseeable to the defendant in the ordinary course of  
17 business.

18 OVERT ACTS

19 24. In addition to causing the use of the United States Postal Service or a private or  
20 commercial interstate carrier in furtherance of the conspiracy and to effect the illegal objects  
21 thereof, the defendant and co-conspirators, in the manner described in Count Three, Paragraph  
22 16, and for the purpose of carrying out the charged conspiracy, on multiple occasions paid out  
23 and received substantial sums in payoffs in exchange for their agreement not to compete at the  
24 Contra Costa County, California public real estate foreclosure auctions in the Northern District  
25 of California.

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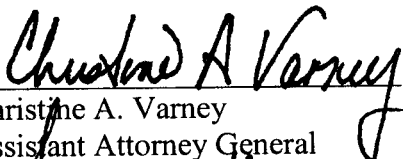
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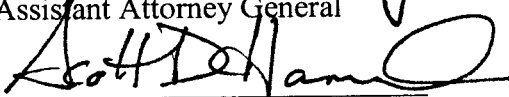


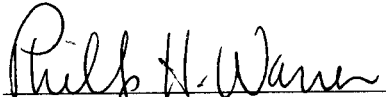
JURISDICTION AND VENUE

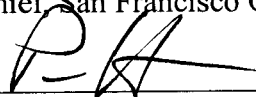
25. The combination, conspiracy, and agreement to violate Title 18, United States Code, Section 1341 charged in this Information was carried out, in part, in the Northern District of California, within the five years preceding the filing of this Information.

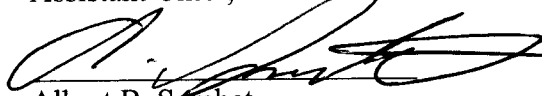
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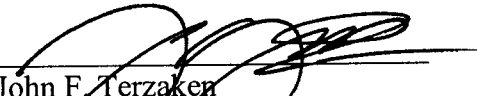
  
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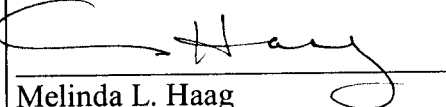
  
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