UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CRIMINAL NO. 12-177 (JRT/JSM)

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| UNITED STATES OF AMERICA, | ) | |
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| Plaintiff, | ) | **GOVERNMENT'S RESPONSE TO DEFENDANT'S POSITION ON SENTENCING** |
| | ) | |
| v. | ) | |
| | ) | |
| CHRISTOPHER JON ANDREWS, | ) | |
| | ) | |
| Defendant. | ) | |

The United States of America, by and through its attorneys, John R. Marti, Acting United States Attorney for the District of Minnesota, and Tracy L. Perzel and John Kokkinen, Assistant United States Attorneys, respectfully submits its response to defendant's position on sentencing.

The defendant, through his position on sentencing (Dkt. 60), seeks to minimize and deflect blame for his criminal conduct by carving out just *one* of the several manner and means of the conspiracy that he will admit, namely, providing buyers with undisclosed cash-to-close loans. (*Cf.* Dkt. 1 at ¶¶ 11-20 (indictment section identifying detailing the manner and means of conspiracy)). Simultaneously, the defendant tries to divert this Court's focus for the remaining aspects of the fraud scheme to the various "professionals" with whom the defendant conspired. The defendant cannot, however, deceive this Court by claiming "professionals" convinced him that his blatantly criminal

behavior was not fraud.[1] Indeed, the defendant used "professionals" to conceal and perpetuate his fraud.

## I. IT DOES NOT TAKE A "PROFESSIONAL" TO KNOW THAT LYING ABOUT THE MOST IMPORTANT TERM OF A REAL ESTATE TRANSACTION, THE SALES PRICE, IS FRAUD.

The defendant's argument ignores the undisputed and critical fact that the sales price stated in the purchase agreement was *always* false and, more importantly, the defendant knew it.

> As early as 2005, the defendant contacted various residential builders with properties for sale. He negotiated with the builders to purchase multiple properties *at reduced prices*. The defendant then solicited family and friends to purchase the properties *at prices higher than he had negotiated with the builders*.

(PSR at ¶ 9 (emphasis added); Dkt. 1 at ¶ 11 (indictment identifying seller's price and buyer's higher price); Dkt. 50 at ¶ 2(e) (plea agreement delineating the seller's price and buyer's higher price)). The defendant negotiated with builders to sell their properties at reduced prices ("true, reduced price") and arranged for buyers to buy these properties at higher prices ("false, higher price"). In reality, as the true, reduced price plainly demonstrates, the buyer was not willing to pay the false, higher price and the seller was willing to accept far less than the false, higher price. And, the lenders never knew of the true, reduced prices because the defendant and his coconspirators intentionally concealed them. The defendant did so by drafting and/or having his agents draft purchase

[1] The defendant's argument may result in denial of his acceptance of responsibility, depending on the Court's conclusions as to relevant conduct. U.S.S.G. § 3E1.1, cmt. n.1(A) ("However, a defendant who falsely denies or frivolously contests relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility."). This may alter the United States' sentencing request.

agreements that included the false, higher prices and excluded the true, reduced prices. As a result, and as the defendant well knew, every document that flowed from that purchase agreement was *always* false – appraisals, mortgage loan applications, and HUD-1 settlement statements, among other related documents – in that they *always* represented that the price that the buyer was willing to pay and the seller was willing to accept was the false, higher price.

As one example of this, the defendant arranged for buyer C.H. to purchase a property in Andover, Minnesota, and had his wife (L.A.), who was then a real estate agent, identify the false, higher price ($314,025) in the purchase agreement. (Gov't Ex. 1 at 1, line 27-28 (real estate documents including purchase agreement)). This false, higher price was recorded on the HUD-1 settlement statement. (*Id.* at 20 (lines 101 and 401)). In reality, the true, lower price was almost $30,000 less than that, as evidenced by the mortgage loan proceeds ultimately paid to and retained by the buyer. (*Id.* at 20, 15, 18, respectively (HUD-1 settlement statement (line 507 reflecting payment to Market Trend Realty of $62,805); check from Market Trend Realty to C.H. for $62,305; check from $32,500 from C.H. to the defendant to repay undisclosed cash-to-close loan)).

A non-fraudulent memorialization of these transactions would have indicated that the seller was always accepting the true, reduced price negotiated by the defendant, not the false, higher price. The defendant knew of this fundamental fraud in each transaction, as he had negotiated and completed more than 47 transactions for himself, his brother, and his wife, which contained the same, undisclosed and material information – that the sales price was *always* falsely memorialized in the purchase agreement. The defendant

is, therefore, properly held responsible for all the transactions that relied on false sales prices.

## II. IT DOES NOT TAKE A "PROFESSIONAL" TO KNOW THAT DECEPTION USED TO CONCEAL THE TRUE TERMS OF A REAL ESTATE TRANSACTION – SUCH AS A SUBSTANTIAL POST-CLOSING PAYMENT TO THE BUYER – IS FRAUD.

The purchase agreements also concealed material terms of the transactions promised to the buyers. Specifically, the defendant concealed that the buyer expected to walk away from each real estate transaction with $20,000 to $100,000 in mortgage loan proceeds to spend at will. Nowhere – not in the purchase agreements or in any documents that flowed from them – did the defendant and his coconspirators accurately disclose the huge amounts of money the buyers expected to receive from the transactions, post-closing. Indeed, the defendant and his coconspirators worked hard to artfully deceive the lenders, feign actual disclosure, and, unsuccessfully, provide themselves plausible deniability.

For example, the defendant and his coconspirators used the concept of pre-paid management fees to conceal the payment of mortgage loan proceeds to the buyer. Once the lender approved the mortgage loan funding based on the false, higher price stated in the purchase agreement and the transaction was scheduled to close, the real estate agent prepared a false invoice in the name of a limited liability company ("LLC").[2] The LLC

[2] Conveniently, the defendant fails to acknowledge the falsity of these invoices—which were either drafted by him or his agents—and claims that they evidenced reality. (Dkt. 60 at 9-10.) Even assuming the defendant's management company charged an extraordinary fee of $100 per month to manage one property, which it did not, the typical post-closing payment to the buyer would have funded more than 20 years of management

was actually the buyer's LLC but that fact was concealed from the lender. The invoices were drafted to deceive in that the return address identified for the LLC was never the buyer's home address and had no readily apparent connection to the buyer. (*See, e.g.*, Gov't Ex. 2 at 1-3 (fax cover sheet, false invoice for management fees, and fax confirmation)). Sometimes the address was that of a USPS mailbox held in the name of L.A. *Id.* at 2, 4, 6 (USPS documents identifying box and box address, as rented by L.A.). Other times the address was that of a private mailbox for the defendant's management company. *Id.* at 15-16 (false invoice for management fee and letter on CNC letterhead, both bearing same address). On still other occasions, the address was for yet another private mailbox that the lender would have no way of connecting to the buyer. Furthering the deception, the invoices also failed to include the buyer's name and falsely claimed that the LLC was owed substantial prepaid management fees. *Id.* at 2, 15 (false invoices for management fees). The title closer received the invoice and used it as the paper justification to cut a check to the LLC from mortgage loan proceeds, a check the buyer would receive post-closing from the defendant or someone acting at his direction. The defendant's argument that a lender could have simply gone to the Minnesota Secretary of State's website to identify the owners of the LLCs is incredulous. The burden is on the parties to a real estate transaction to make truthful disclosures, not on the

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fees and could have been used by the buyer for anything. In that regard, the pre-paid management fees listed on the HUD-1 falsely represented that the LLCs provided services that had a fair market value equal to the amount of the pre-paid management fees when, in fact, they did not.

lenders – who assume the transaction is truthfully memorialized – to presume foul play and ferret out fraud.

Even a cursory review of the HUD-1 settlement statements, with which the defendant was well familiar, shows that the lender would have had no way of knowing that there was a substantial sum being *paid to* the buyer as a result of a fictitious invoice. Indeed, the bottom-line totals on the HUD-1 settlement statements always reflected an often substantial amount of money being *paid into the transaction by the buyer* and an amount of money being *paid out of the transaction to the seller*, never the other way around.[3] (*See*, *e.g.*, Gov't Ex. 2 at 9 (HUD-1 Settlement Statement, lines 303 and 603)). This is quite the opposite of the "brazenly obvious" disclosure the defendant now claims. (Dkt. 60 at 1 (defendant's position on sentencing)). Simply, it does not take a "professional" to know that faking documents like LLC invoices to disguise an undisclosed post-closing payments to the buyers constitutes fraud.

As the defendant's fraud continued, his methodology for disguising large payments to buyers post-closing through fake invoices morphed into concealing the buyers' receipt of mortgage loan proceeds as large facilitator fees. The entire premise of the "facilitator agreement" was false in that the facilitator did absolutely nothing to facilitate the real estate transaction at issue – did not find the property, did not connect the buyer and seller, did not show the residence, and did not negotiate the transaction on

[3] Line 303 on a HUD-1 settlement statement reflects that transaction's bottom line as to the borrower and, in the instant transactions, always indicated that the borrower was paying money into the transaction *not* that the buyer was receiving a substantial sum of money from the transaction.

behalf of either the seller or the buyer. Rather, the facilitator was nothing more than a money-launderer, who was willing to receive the purported facilitator fee from the title company post-closing, take her $500 fee off the top (or even waive the fee at times), and then send the remaining money to the buyer. (*See, e.g.*, Gov't Ex. 3 at 1, 4 (HUD-1 settlement statement for defendant's and L.A.'s property purchase identifying $139,320 in "facilitator fees," and check from facilitator to L.A. for the identical amount)). The defendant knew all of this, but kept the lenders in the dark as he did with other material terms of the transactions. As a result, the lender had no idea that the facilitator was not providing any legitimate services, contrary to the terms of any facilitator agreement, and had no idea about the enormous amount of money the buyer would circuitously receive from mortgage loan proceeds *vis a vis* the facilitator. It does not take a "professional" to know that pretending to use a facilitator so as to conceal undisclosed post-closing payments to the buyer is fraud.

If the defendant and his coconspirators truly believed this practice of providing money to the buyer post-closing was legal, as he claims in his sentencing position pleading, why did they not plainly state in the purchase agreement (and on all the documents that flowed therefrom) that the buyer would receive a substantial payment post-closing? Tellingly, the defendant did exactly this in pitching the real estate transactions to the buyers by providing detailed spreadsheets that disclosed the amount of money the buyers could reasonably expect to receive post-closing. (*See, e.g.*, Gov't Ex. 4 ("CNC Property Management Builder's Discount Worksheet" identifying "builder's net" and various rebates including that of the "downpayment")). While this was a selling

point for buyers in that they were buying real estate with no money down, it would have been a significant red flag for the lenders. Indeed, the defendant and his conspiratorial "professionals" knew this and, therefore, knew they needed to deceive the lenders. Telling the truth would have resulted in a purchase agreement that reflected the true, reduced price as well as an appraisal that revealed the less than arm's length nature of the transaction. The appraisal, if based on the true, reduced price, also would have exposed the actual, lesser value of the property. Carried through the process, the truth would have resulted, at best, in the lender approving a reduced mortgage loan amount, one insufficient to fund the promised post-closing payment to the buyer. And, most importantly, telling the truth would have tanked the transactions because, as the defendant well knew, none of the buyers would have purchased the homes but for the promise of a post-closing payment. Without these transactions, the defendant and his cadre of "professionals" would have never received all the business that his fraud generated. Accordingly, the defendant is properly responsible for all transactions with disguised post-closing payments to the buyers.

## III. IT DOES NOT TAKE A "PROFESSIONAL" TO KNOW THAT AN APPRAISAL DERIVED FROM FRAUDULENT INFORMATION IN THE PURCHASE AGREEMENT WILL PRODUCE AN APPRAISAL THAT PERPETUATES THE FRAUD.

The defendant claims the lenders were protected in these transactions because appraisals supported the false, higher prices stated in the purchase agreements and, therefore, the residences sufficiently collateralized the mortgage loans.

Of course, the defendant's argument ignores that the purchase agreements always concealed the less then arm's length nature of the real estate transaction and, with the behind-the-scenes efforts of the defendant and his coconspirators to "set the comps," resulted in faulty appraisals. In a traditional real estate transaction, the seller wants to obtain the highest price possible for his or her residence and the buyer wants to pay the lowest price possible for the residence, placing the seller's and buyer's interests at odds. This creates an arm's length transaction where the property's fair market value would be the resulting sales price. In the transactions orchestrated by the defendant, however, the seller's and buyer's interests aligned. The seller had already agreed to accept the undisclosed, reduced price but knew that the transaction would be recorded at a false, higher price to produce the post-closing payment to the buyer. The buyer wanted the largest post-closing payment possible. For the buyer, the false, higher price – assuming it was supported by an appraisal – would translate to a larger mortgage loan, one that would support the promised post-closing payment to the buyer. For the seller, the false, higher price would translate to a recorded sale that would shore up the property values for pending and future transactions in the area.

Indeed, the defendant and his coconspirators understood the importance of controlling the individual real estate transactions, including the prices at which the residences sold, to set the value of "comparable properties" for use in future appraisals. Doing so was necessary to produce appraisals that supported the false, higher prices, as the defendant chided by email to various individuals including Daniel Boler, Tom Balko, L.A., and others:

> My understanding today is that 4704 did not make the appraised value and will not close. It came in at 270,000 25k below. Dan is now submitting this to another lender. My concern is that Tom & Rick had the task of buying the first building and setting up this projects comps. That did not happen and now we have issues. Going forward we will not ever agree to having a building go to underwriting without solid comps in the area. This process makes all of us look bad.
>
> Tom the other build sites need to be reviewed for comps, before we move forward with any closing dates.
>
> Chris

(Gov't Ex. 5 at 2 (email exchange)). As this email plainly shows, the defendant did not view the appraisal process as an objective one that had the goal of establishing a property's fair market value. It was, to the defendant, simply another part of the process he needed to manipulate in order to produce an inflated value, a higher mortgage loan, the post-closing payment promised to the buyer, and artificially high property values (in the form of comparable properties) to give credence to the previous fraudulent transactions and enable future fraudulent transactions. This rigged appraisal process not only deceived the lenders, giving them the false understanding that the residences for which they were funding mortgage loans were worth the false, higher prices when in fact they were not, but it also kept lenders from uncovering the fraud. Again, the defendant is properly accountable for all transactions involving the false, higher prices.

## IV. IN OPERATING HIS ONE-STOP REAL-ESTATE SHOP, THE DEFENDANT LED AND ORGANIZED *AT LEAST ONE* OF THE FIVE OR MORE PARTICIPANTS IN HIS CRIMINAL CONSPIRACY.

The defendant claims he did not lead five criminal participants in the instant matter. This argument ignores, however, that in applying the five-or-more-participants requirement, the defendant need organize or lead only *one* other participant who is

criminally responsible for the offense. U.S.S.G. § 3B1.1, cmt. n.1-2; *United States v. Willis*, 433 F.3d 634, 636 (8th Cir. 2006). And, of course, there can be more than one person who qualifies as a leader or organizer of a criminal conspiracy. U.S.S.G. § 3B1.1, cmt. n.4

Here, there are many participants who are criminally responsible for the instant offense including Robert Rick (realtor), Daniel Boler (mortgage broker), Suzanne Mathis (closer), L.A. (realtor), and Lindsay Loyear (realtor/"facilitator"), among others, and they all acted with the purpose of completing the transactions as the defendant had crafted them with the false, higher prices and the post-closing payments to the buyers.

The defendant – attempting to shield himself behind "professionals" – operated a self-proclaimed "one-stop-shop" where he called the shots for the instant real estate transactions. Though he was not a licensed real estate agent, was not a licensed mortgage broker or loan officer, was not an appraiser, did not have the buyers' best interests in mind, was not a licensed title closer, and was not an agent of the buyers' LLCs, he readily wore all these hats and directed others as they wore them by presenting properties to the buyers, negotiating the terms of the transactions, directing preparation of the purchase agreements, rigging the appraisal process, manipulating the mortgage loan process, attending closings for other buyers' transactions, receiving the post-closing payments, and paying those post-closing payments to the buyers. This cycle, which started and ended with the defendant, was fueled by the defendant's greed, continued through house, after house, after house in neighborhoods across Minnesota.

And when someone in the conspiracy, wouldn't or couldn't do the transaction as the defendant desired, the leader – the defendant – found someone who would or directly addressed the problem himself. (*See, e.g.*, Gov't Ex. 5 at 2 (defendant's email stating, "Going forward *we* will not ever agree to having a building go to underwriting without solid comps in the area.") (emphasis added)). The defendant would not allow his scheme – and his profits – to be limited by someone else's unwillingness or inability to perform. To be sure, the defendant gained the most from it, approximately $2.7 million between 2005 and 2008 in the form of third-party payments, payments from builders, post-closing payments from mortgage loan proceeds (paid through the title companies), and real estate commission payments paid through Bell Home Realty. (Gov't Ex. 6 (summary chart of payments to the defendant)). Accordingly, the defendant led and organized *at least one* of the five or more criminal participants involved in the conspiracy, as the enhancement requires, resulting in an additional four level for his aggravating role.

**CONCLUSION**

In sum, the defendant and his conspiratorial "professionals" constructed real estate transactions in which the subject properties were falsely overvalued and the buyer had "no skin in the game." The defendant, the realtors, the mortgage broker, the "facilitator" and the titles closers all knew the lenders were being deceived and worked together, at the defendant's direction, to perpetuate this deception, complete the transactions, and profit. The fraudulent foundation of each transaction – the false purchase price and resulting post-closing payment to the buyers – substantially increased the risk that the buyers would default on the mortgage loans and created fictionalized property values in

communities where the residences were located. Lenders unknowingly took greater risks than they should have, loaning more money than appropriate in transactions that were fraudulent from the start, all as a result of the defendant's knowing actions in establishing the false, higher sales price. Therefore, the defendant's suggestion for carving-out limited criminal culpability does not comport with the reality that is this case and should be denied.

Dated: October 23, 2013

Respectfully submitted,

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