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1 2 3 4 5 6 7 8	JEANE HAMILTON (CSBN 157834) ALBERT B. SAMBAT (CSBN 236472) DAVID J. WARD (CSBN 239504) CHRISTINA M. WHEELER (CSBN 203395) MANISH KUMAR (CSBN 269493) MICAH L. WYATT (CSBN 269493) MICAH L. WYATT (CSBN 267465) U.S. Department of Justice Antitrust Division 450 Golden Gate Avenue Box 36046, Room 10-0101 San Francisco, CA 94102 david.ward@usdoj.gov Telephone: (415) 436-6660
9 10	Attorneys for the United States
11	UNITED STATES DISTRICT COURT
12	NORTHERN DISTRICT OF CALIFORNIA
13	NORTHERN DISTRICT OF CALIFORNIA SAN FR CORCO DIVISION) Criminal No. 301
14) Criminal No.
15	UNITED STATES OF AMERICA) INFORMATION
16 17	 v. VIOLATIONS: 15 U.S.C. § 1 – bid Rigging (Count One); 18 U.S.C. § 1349 – Conspiracy to
18) Commit Mail Fraud (Count Two) LYDIA FONG,
19 20) Defendant.)
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22	The United States of America, acting through its attorneys, charges:
23	LYDIA FONG,
24 25	the defendant herein, as follows:
26	BACKGROUND 1. At all times relevant to this Information, when California homeowners defaulted
27	on their mortgages, mortgage holders could institute foreclosure proceedings and sell the
28	properties through non-judicial public real estate foreclosure auctions ("public auctions"). These
-	INFORMATION – LYDIA FONG – 1

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public auctions were governed by California Civil Code, Section 2924, et seq. Typically, a 1 2 trustee was appointed to oversee the public auctions. These public auctions usually took place at 3 or near the courthouse of the county in which the properties were located. The auctioneer, acting 4 on behalf of the trustee, sold the property to the bidder offering the highest purchase price. 5 Proceeds from the sale were then used to pay the mortgage holders, other holders of debt secured 6 by the property, and, in some cases, the defaulting homeowner (collectively, "beneficiaries"). COUNT ONE: 15 U.S.C. § 1 – Bid Rigging

THE COMBINATION AND CONSPIRACY

2. 9 Beginning as early as October 2009 and continuing until in or about November 10 2010, the defendant LYDIA FONG and co-conspirators entered into and engaged in a 11 combination and conspiracy to suppress and restrain competition by rigging bids to obtain selected properties offered at public auctions in San Francisco County in the Northern District of 12 13 California, in unreasonable restraint of interstate trade and commerce, in violation of the Sherman Act, Title 15, United States Code, Section 1. 14

15 3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators to suppress 16 17 competition by agreeing to refrain from or stop bidding against each other to purchase selected 18 properties at public auctions in San Francisco County at non-competitive prices.

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

22 agreeing not to compete to purchase selected properties at public auctions a. in San Francisco County; 23

designating which conspirator would win the selected properties at the b. 24 25 public auctions for the group of conspirators; and

refraining from or stopping bidding for the selected properties at the 26 c. public auctions. 27

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INFORMATION – LYDIA FONG – 2

5. Various entities and individuals, not made defendants in this Count, participated 2 as conspirators in the offense charged and performed acts and made statements in furtherance 3 thereof.

TRADE AND COMMERCE

5 6. 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, beneficiaries located in 8 states other than California received proceeds from the public auctions that were subject to the 9 bid-rigging conspiracy.

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JURISDICTION AND VENUE

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

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1. 14 COUNT TWO: 18 U.S.C. § 1349 - Conspiracy to Commit Mail Fraud 15

THE CONSPIRACY

8. 17 Beginning as early as October 2009 and continuing until in or about November 18 2010 in San Francisco County in the Northern District of California, the defendant LYDIA 19 FONG and co-conspirators did willfully and knowingly combine, conspire, and agree with each other to violate Title 18, United States Code, Section 1341, namely, to knowingly devise and 20 intend to devise and participate in a scheme and artifice to defraud beneficiaries, and to obtain 21 22 money and property from beneficiaries by means of materially false and fraudulent pretenses, 23 representations, and promises.

9. The objects of the conspiracy were to fraudulently acquire title to selected 24 properties sold at public auctions in San Francisco County, to make and receive payoffs, and to 25 26 divert money to conspirators that would have gone to the beneficiaries.

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INFORMATION – LYDIA FONG – 3

1 10. Various entities and individuals, not made defendants in this Count, participated
 as co-conspirators in the offense charged and performed acts and made statements in furtherance
 thereof.
 <u>MEANS AND METHODS</u>

5 11. For the purpose of forming and carrying out the charged conspiracy, the
6 defendant and co-conspirators did those things that they conspired to do, including, among other
7 things:

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negotiating payoffs with one or more conspirators not to compete;

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b. in some instances, falsely participating in foreclosure auctions to create
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10 the appearance that they were bidding competitively when, in fact, they were not;

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purchasing the selected properties at public auctions at suppressed prices;

d. paying conspirators monies that otherwise would have gone to the
beneficiaries;

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c.

14 e. taking steps to conceal the fact that monies were diverted from the
15 beneficiaries to the conspirators;

16 f. making and causing to be made materially false and misleading statements
17 on records of public auctions that trustees relied upon to distribute proceeds from the public
18 auction to the beneficiaries and convey title to properties sold at the public auction; and

19 g. causing the suppressed purchase price to be reported and paid to the20 beneficiaries.

12. For the purpose of executing the scheme and artifice to defraud and attempting to
do so, the defendant and co-conspirators knowingly used and caused to be used the United States
Postal Service and private or commercial interstate carriers. For example, trustees used the
United States mail and private or commercial interstate carriers to transmit the Trustee's Deeds
Upon Sale and other title documents to participants in the conspiracy. These mailings were
foreseeable to the defendant in the ordinary course of business.

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INFORMATION – LYDIA FONG – 4

JURISDICTION AND VENUE

13. 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.

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

6 7 8 9 Pozen Sharis A. Acting Assistant Attorney General 10 11 Scott D. Hammond 12 Deputy Assistant Attorney General 13 14 Briah J. Stretch Attorney for the United States 15 Acting Under Authority Conferred by 28 U.S.C. § 515 16 17 18 19 20 21 22 23 24 25 26 27 28 **INFORMATION – LYDIA FONG – 5**

1/m Phillip H Warren

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