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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 UNITED STATES OF AMERICA,

16 v.

17 JOHN MICHAEL GALLOWAY,
18 NICHOLAS DIAZ,
19 GLENN GUILLORY,
20 THOMAS JOYCE, and
21 CHARLES ROCK,

22 Defendants.

CR No. 14 0607

23 VIOLATIONS: 15 U.S.C. § 1 –
24 Bid Rigging (Count One);
25 18 U.S.C. § 1341 – Mail Fraud (Counts
26 Two through Nine); 18 U.S.C. §
27 981(a)(1)(C); 28 U.S.C. § 2461(c) –
28 Forfeiture

JD

29 I N D I C T M E N T

30 The Grand Jury charges that:

31 BACKGROUND

32 1. At all times relevant to this Indictment, when California homeowners defaulted on
33 their mortgages, mortgage holders could institute foreclosure proceedings and sell the properties
34 through non-judicial public real estate foreclosure auctions (“public auctions”). These public
35 auctions were governed by California Civil Code, Section 2924, *et seq.* Typically, a trustee was

1 appointed to oversee the public auctions. These public auctions usually took place at or near the
 2 courthouse of the county in which the properties were located. The auctioneer, acting on behalf
 3 of the trustee, sold the property to the bidder offering the highest purchase price. Proceeds from
 4 the sale were then used to pay the mortgage holders, other holders of debt secured by the
 5 property, and, in some cases, the defaulting homeowner (collectively "beneficiaries").

6 2. During the period covered by this Indictment, defendant JOHN MICHAEL
 7 GALLOWAY was a bidder at and purchased real estate at public auctions in Contra Costa
 8 County, California, and directed defendant NICHOLAS DIAZ and others to bid on and purchase
 9 real estate at public auctions in Contra Costa County, California.

10 3. During the period covered by this Indictment, defendant NICHOLAS DIAZ was a
 11 bidder at and purchased real estate at public auctions in Contra Costa County, California, on
 12 behalf of defendant JOHN MICHAEL GALLOWAY and others.

13 4. During the period covered by this Indictment, defendant GLENN GUILLORY
 14 was a bidder at and purchased real estate at public auctions in Contra Costa County, California,
 15 and directed others to bid on and purchase real estate at public auctions in Contra Costa County,
 16 California.

17 5. During the period covered by this Indictment, defendant THOMAS JOYCE was a
 18 bidder at and purchased real estate at public auctions in Contra Costa County, California, on
 19 behalf of others.

20 6. During the period covered by this Indictment, defendant CHARLES ROCK was a
 21 bidder at and purchased real estate at public auctions in Contra Costa County, California.

22 **COUNT ONE: 15 U.S.C. § 1 – Bid Rigging**

23 7. The following individuals are hereby indicted and made defendants on the charge
 24 contained in Count One below:

- 25 a. JOHN MICHAEL GALLOWAY;
- 26 b. NICHOLAS DIAZ;
- 27 c. GLENN GUILLORY;
- 28 d. THOMAS JOYCE; and

1 e. CHARLES ROCK.

2 THE COMBINATION AND CONSPIRACY

3 8. Paragraphs 1 through 6 of this Indictment are re-alleged and incorporated herein
4 as if fully set forth in this Count.

5 9. Beginning as early as June 2008 and continuing until in or about January 2011,
6 the exact dates being unknown to the Grand Jury, the defendants, JOHN MICHAEL
7 GALLOWAY, NICHOLAS DIAZ, GLENN GUILLORY, THOMAS JOYCE, and CHARLES
8 ROCK, and others known and unknown to the Grand Jury, entered into and engaged in a
9 combination and conspiracy to suppress and restrain competition by rigging bids to obtain
10 hundreds of selected properties offered at public auctions in Contra Costa County in the Northern
11 District of California, in unreasonable restraint of interstate trade and commerce, in violation of
12 Section 1 of the Sherman Act, Title 15, United States Code.

13 10. The charged combination and conspiracy consisted of a continuing agreement,
14 understanding, and concert of action among the defendants and co-conspirators to suppress
15 competition by refraining from and stopping bidding against each other to purchase hundreds of
16 selected properties at public auctions in Contra Costa County at non-competitive prices.

17 MEANS AND METHODS

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

- 21 a. agreeing not to compete to purchase selected properties at public auctions;
- 22 b. designating which conspirators would win selected properties at public
23 auctions;
- 24 c. refraining from and stopping bidding for selected properties at public
25 auctions;
- 26 d. purchasing selected properties at public auctions at artificially suppressed
27 prices;
- 28 e. negotiating, making, and receiving payoffs for agreeing not to compete

1 with co-conspirators; and

- 2 f. holding second, private auctions, known as “rounds,” to determine the
3 payoff amounts and the conspirators who would be awarded the selected
4 properties.

5 12. Various entities and individuals, not made defendants in this Count, participated
6 as co-conspirators in the offense charged and performed acts and made statements in furtherance
7 thereof.

8 TRADE AND COMMERCE

9 13. The public auctions and the business activities of the defendants and co-
10 conspirators that are the subject of this Count were within the continuous and uninterrupted flow
11 of, and substantially affected, interstate trade and commerce. For example, during the period
12 covered by this Count:

- 13 a. substantial proceeds from the sale of properties purchased by the
14 conspirators pursuant to the bid-rigging conspiracy were transmitted from
15 locations in one state to certain beneficiaries located in other states;
16 b. instructions regarding the terms of sale of properties that would be
17 purchased by the conspirators pursuant to the bid-rigging conspiracy were
18 transmitted and communicated by certain beneficiaries located in one state
19 to trustees located in other states;
20 c. paperwork related to the sale of properties purchased by the conspirators
21 pursuant to the bid-rigging conspiracy was sent by trustees located in one
22 state to certain beneficiaries located in other states, notifying them of the
23 sale of properties in which the beneficiaries held an interest; and
24 d. beneficiaries included companies that operated in interstate commerce.

25 JURISDICTION AND VENUE

26 14. The combination and conspiracy charged in this Count was carried out, in part, in
27 the Northern District of California, within the five years preceding the return of this Indictment.

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

COUNTS TWO THROUGH NINE: 18 U.S.C. § 1341 – Mail Fraud

The Grand Jury further charges that:

SCHEME TO DEFRAUD

15. Paragraphs 1 through 6 of this Indictment are re-alleged and incorporated herein as if fully set forth in these Counts.

16. Beginning as early as June 2008 and continuing until in or about January 2011, the exact dates being unknown to the Grand Jury, in Contra Costa County in the Northern District of California, the defendants, JOHN MICHAEL GALLOWAY, NICHOLAS DIAZ, GLENN GUILLORY, THOMAS JOYCE, and CHARLES ROCK, and others known and unknown to the Grand Jury, did knowingly and with intent to defraud, devise and participate in a scheme and artifice to defraud beneficiaries and to obtain money and property from beneficiaries by means of materially false and fraudulent pretenses, representations, and promises, and for purposes of executing such scheme, did use and knowingly cause to be used the United States mail and private or commercial interstate carriers.

17. The purpose of the scheme was to fraudulently acquire title to hundreds of selected properties sold at public auctions in Contra Costa County and to divert to co-schemers money that would have gone to beneficiaries.

MEANS AND METHODS OF THE SCHEME TO DEFRAUD

18. For the purpose of forming and carrying out the charged scheme to defraud, the defendants and co-schemers did those things that they schemed to do, including, among other things:

- a. holding second, private auctions, known as “rounds,” to determine payoff amounts and the schemers who would be awarded the selected properties;
- b. making and causing to be made materially false and misleading statements that trustees relied upon to distribute proceeds to beneficiaries and to convey title to selected properties;
- c. paying co-schemers monies that otherwise would have gone to beneficiaries;

- d. concealing rounds and payoffs from trustees and beneficiaries; and
- e. causing the suppressed purchase prices to be reported and paid to beneficiaries.

USE OF THE MAILS

19. In order to execute the scheme and artifice to defraud, the defendants and co-schemers knowingly used and caused to be used the United States Postal Service and private or commercial interstate carriers.

20. On or about the dates and with respect to the individual defendants specified as to each count set forth below, the defendants and co-schemers did knowingly cause to be delivered by United States mail and private or commercial carriers, including the United States Postal Service, United Parcel Service, and FedEx, the items identified in each Count below:

Count	Defendants	Approx. Date	To	From	Description
2	JOHN MICHAEL GALLOWAY	12/04/2009	15 Amberwood Lane, Walnut Creek, California	CR Title Services, Inc.	Purchase Money and Auction Paperwork for 4395 North Sugar Maple, Concord, California
3	JOHN MICHAEL GALLOWAY, THOMAS JOYCE, CHARLES ROCK	12/22/2009	22538 Mission Blvd., Hayward, California	California Reconveyance Company	Trustee's Deed Upon Sale for 2472 Millstream Lane, San Ramon, California
4	CHARLES ROCK	04/07/2010	3939 Woodside Ct., Lafayette, California	Recon Trust	Trustee's Deed Upon Sale for 19 Heritage Oaks Road, Pleasant Hill, California
5	GLENN GUILLORY	04/05/2010	2141 5th Ave., San Diego, California	Lender Processing Services, Inc.	Purchase Money and Auction Paperwork for 2180 Geary Road, Pleasant Hill, California

Count	Defendants	Approx. Date	To	From	Description
6	JOHN MICHAEL GALLOWAY, NICHOLAS DIAZ, GLENN GUILLORY	10/14/2010	6680 Alhambra Ave., #403, Martinez, California	California Reconveyance Company	Trustee's Deed Upon Sale for 2304 Cambridge Drive, Discovery Bay, California
7	JOHN MICHAEL GALLOWAY, NICHOLAS DIAZ	10/21/2010	525 East Main St., El Cajon, California	Lender Processing Services, Inc.	Purchase Money and Auction Paperwork for 1711 Costa Ave, San Pablo, California
8	JOHN MICHAEL GALLOWAY, NICHOLAS DIAZ, THOMAS JOYCE	09/27/2010	2141 5th Ave., San Diego, California	Lender Processing Services, Inc.	Purchase Money and Auction Paperwork for 4003 Roland Drive, Concord, California
9	JOHN MICHAEL GALLOWAY, NICHOLAS DIAZ	10/08/2010	1100 Virginia Dr., 190-FTW-D40, Fort Washington, Pennsylvania	Lender Processing Services, Inc.	Purchase Money and Auction Paperwork for 140 Eveningstar Court, Pittsburg, California

JURISDICTION AND VENUE

21. The scheme and artifice to defraud charged in Counts Two through Nine were carried out, in part, in the Northern District of California, within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1341.

FORFEITURE ALLEGATION: 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)

22. Paragraphs 1 through 6 and 15 through 21 of this Indictment are hereby re-alleged as if fully set forth herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

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1 23. Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28,
 2 United States Code, Section 2461(c), upon conviction of the offenses alleged in Counts Two
 3 through Nine of this Indictment, each defendant so convicted shall be jointly and severally liable
 4 to forfeit to the United States any property constituting, or derived from, proceeds obtained
 5 directly or indirectly from the scheme and artifice to defraud alleged in said Counts.

6 24. If, as a result of any act or omission of the defendants, any of said property:

- 7 a. cannot be located upon the exercise of due diligence;
- 8 b. has been transferred or sold to, or deposited with,
 9 a third party;
- 10 c. has been placed beyond the jurisdiction of the Court;
- 11 d. has been substantially diminished in value; or
- 12 e. has been commingled with other property that cannot be divided
 13 without difficulty,

14 any and all interest that the defendants have in any other property, up to the value of the property
 15 described in Paragraph 23, above, shall be forfeited to the United States pursuant to Title 21,

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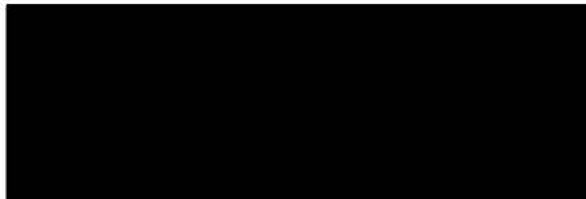
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1 United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section
2 2461(c).

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4 Dated: 12-3-14

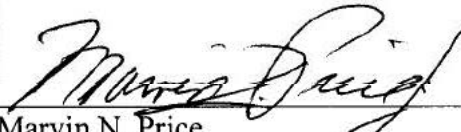


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