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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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CR11-00425

1 JEANE HAMILTON (CSBN 157834)
2 ALBERT B. SAMBAT (CSBN 236472)
3 DAVID J. WARD (CSBN 239504)
4 CHRISTINA M. WHEELER (CSBN 203395)
5 MANISH KUMAR (CSBN 269493)
6 U.S. Department of Justice
7 Antitrust Division
8 450 Golden Gate Avenue
9 Box 36046, Room 10-0101
10 San Francisco, CA 94102
11 albert.sambat@usdoj.gov
12 Telephone: (415) 436-6660

13 Attorneys for the United States

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

17 UNITED STATES OF AMERICA

) Criminal No.

) INFORMATION

18 v.

) VIOLATIONS: 15 U.S.C. § 1 –
) Bid Rigging (Counts One & Three);
) 18 U.S.C. § 1349 – Conspiracy to
) Commit Mail Fraud (Counts Two &
) Four)

19 DAVID MARGEN,

20 Defendant.

21 The United States of America, acting through its attorneys, charges:

22 DAVID MARGEN,

23 the defendant herein, as follows:

24 BACKGROUND

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

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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 March 2009 and continuing until in or about June 2010, the
6 defendant DAVID MARGEN and co-conspirators entered into and engaged in a combination
7 and conspiracy to suppress and restrain competition by rigging bids to obtain selected real estate
8 offered at Alameda County, California public real estate foreclosure auctions in the Northern
9 District of California, in unreasonable restraint of interstate trade and commerce, in violation of
10 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 – DAVID MARGEN – 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 March 2009 and continuing until in or about June 2010 in
4 Alameda County in the Northern District of California, the defendant DAVID MARGEN and
5 co-conspirators did willfully and knowingly combine, conspire, and agree with each other to
6 violate Title 18, United States Code, Section 1341, namely, to knowingly devise and intend to
7 devise a material scheme or artifice to defraud financial institutions and others and to obtain
8 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. In or about March 2009, the defendant DAVID MARGEN and co-conspirators
20 entered into and engaged in a combination and conspiracy to suppress and restrain competition
21 by rigging a bid to obtain selected real estate offered at a Contra Costa County, California public
22 real estate foreclosure auction in the Northern District of California, in unreasonable restraint of
23 interstate trade and commerce, in violation of the Sherman Act, Title 15, United States Code,
24 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 a Contra Costa County,
3 California public real estate foreclosure auction;

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

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

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

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

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

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

18 d. holding a secret private auction, at or near the courthouse steps where the
19 public auction was held, open only to members of the conspiracy, to rebid for the selected real
20 estate obtained at the public real estate foreclosure auction;

21 e. awarding the selected real estate to the conspirator who submitted the
22 highest bid at the private auction; and

23 f. distributing the proceeds of the private auction, including cash payoffs,
24 based upon a predetermined formula agreed upon by the members of the conspiracy.

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

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1 TRADE AND COMMERCE

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

7 JURISDICTION AND VENUE

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

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

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

13 THE CONSPIRACY

14 20. In or about March 2009 in Contra Costa County in the Northern District of
15 California, the defendant DAVID MARGEN and co-conspirators did willfully and knowingly
16 combine, conspire, and agree with each other to violate Title 18, United States Code, Section
17 1341, namely, to knowingly devise and intend to devise a material scheme or artifice to defraud
18 financial institutions and others and to obtain money and property by materially false and
19 fraudulent pretenses and, for the purpose of executing or attempting to execute such scheme or
20 artifice, to knowingly use and cause to be used the United States Postal Service or any private or
21 commercial interstate carrier, in violation of Title 18, United States Code, Section 1349.

22 21. It was an object of the conspiracy that the defendant and his co-conspirators
23 suppress competition by acquiring title to selected real estate at a price lower than would have
24 resulted from a fully competitive auction, carried out by making payoffs to co-conspirators
25 through direct negotiations or by holding a second, private auction and dividing the profits of the
26 scheme (the difference between the public auction price and the price paid at the private auction)
27 among themselves. In other words, the defendant and co-conspirators manipulated the sales
28 price of selected real estate, causing a false, artificially low sales price to be reported and paid to

1 victims of the scheme. It was a further object of the conspiracy that the defendant and
2 co-conspirators obtain title to the fraudulently acquired real estate, including recorded proof of
3 title, in order to permit later sale of the fraudulently acquired real estate and receive additional
4 profits from that sale.

5 MEANS AND METHODS

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

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

9 23. For the purpose of executing the scheme or artifice to defraud, the defendant and
10 co-conspirators did knowingly cause a Trustee's Deed Upon Sale for the fraudulently obtained
11 real estate to be sent or delivered by the United States Postal Service or a private or commercial
12 interstate carrier. This mailing was foreseeable to the defendant in the ordinary course of
13 business.

14 OVERT ACTS

15 24. In addition to causing the use of the United States Postal Service or a private or
16 commercial interstate carrier in furtherance of the conspiracy and to effect the illegal objects
17 thereof, the defendant and co-conspirators, in the manner described in Count Three, Paragraph
18 16, and for the purpose of carrying out the charged conspiracy, paid out and received substantial
19 sums in payoffs in exchange for their agreement not to compete at the Contra Costa County,
20 California public real estate foreclosure auction in the Northern District of California.

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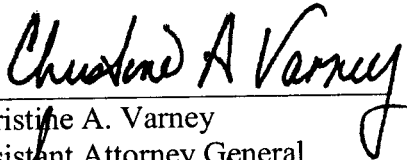
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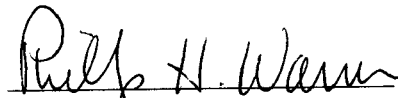
JURISDICTION AND VENUE

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.

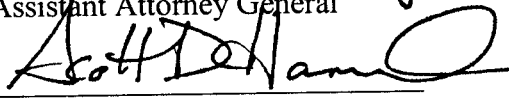
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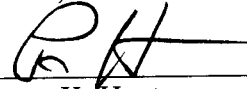
Christine A. Varney
Assistant Attorney General



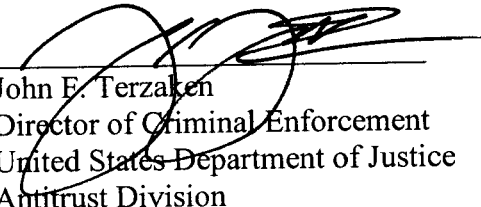
Phillip H. Warren
Chief, San Francisco Office



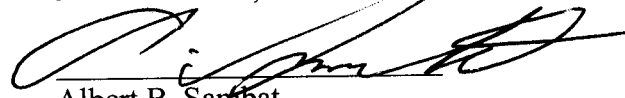
Scott D. Hammond
Deputy Assistant Attorney General



Peter K. Huston
Assistant Chief, San Francisco Office



John E. Terzaken
Director of Criminal Enforcement
United States Department of Justice
Antitrust Division



Albert B. Sambat
Jeane Hamilton
David J. Ward
Christina M. Wheeler
Manish Kumar
Trial Attorneys
United States Department of Justice
Antitrust Division



Melinda L. Haag
United States Attorney
Northern District of California