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OAKLAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CR11-00424 CW

UNITED STATES OF AMERICA v. BRIAN MCKINZIE, Defendant.	Criminal No. **INFORMATION** VIOLATIONS: 15 U.S.C. § 1 – Bid Rigging (Counts One & Three); 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud (Counts Two & Four)

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

BRIAN MCKINZIE,

the defendant herein, as follows:

BACKGROUND

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

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

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

THE COMBINATION AND CONSPIRACY

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

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

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

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

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

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 to do, including, among other things:

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

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

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

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

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

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

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

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

TRADE AND COMMERCE

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

JURISDICTION AND VENUE

7. The combination and conspiracy 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 15, UNITED STATES CODE, SECTION 1.

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

THE CONSPIRACY

8. Beginning as early as November 2008 and continuing until in or about January 2011 in Alameda County in the Northern District of California, the defendant BRIAN MCKINZIE 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 intend to devise a material scheme or artifice to defraud financial institutions and others and to obtain money and property by materially false and fraudulent pretenses and, for the purpose of executing or attempting to execute such scheme or artifice, to knowingly use and cause to be used the United States Postal Service or any private or commercial interstate carrier, in violation of Title 18, United States Code, Section 1349.

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

MEANS AND METHODS

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

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

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

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

OVERT ACTS

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

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.

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

THE COMBINATION AND CONSPIRACY

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

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

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

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

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

16. 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 to do, including, among other things:

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

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

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

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

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

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

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

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

TRADE AND COMMERCE

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

JURISDICTION AND VENUE

19. The combination and conspiracy 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 15, UNITED STATES CODE, SECTION 1.

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

THE CONSPIRACY

20. Beginning as early as November 2008 and continuing until in or about November 2009 in Contra Costa County in the Northern District of California, the defendant BRIAN MCKINZIE 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 intend to devise a material scheme or artifice to defraud financial institutions and others and to obtain money and property by materially false and fraudulent pretenses and, for the purpose of executing or attempting to execute such scheme or artifice, to knowingly use and cause to be used the United States Postal Service or any private or commercial interstate carrier, in violation of Title 18, United States Code, Section 1349.

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

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

MEANS AND METHODS

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

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

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

OVERT ACTS

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

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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.

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

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