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**FILED**

**JAN 28 2011**

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY AMS  
DEPUTY CLERK

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA  
14

15 UNITED STATES OF AMERICA, )  
16 )  
Plaintiff, )  
17 )  
v. )  
18 )  
19 RICHARD W. NORTHCUTT, )  
20 )  
Defendant. )  
21

2:11 - CR 0038 MCE  
No.

PLEA and COOPERATION AGREEMENT

22  
23 I.

24 INTRODUCTION

25 A. Scope of Agreement: The Information to be filed in this  
26 case charges the defendant, RICHARD W. NORTHCUTT, with one count  
27 of participating in a conspiracy to suppress and restrain  
28 competition by rigging bids to obtain selected real estate

1 offered at San Joaquin County, California public real estate  
2 auctions in the Eastern District of California in unreasonable  
3 restraint of interstate trade and commerce, in violation of the  
4 Sherman Act, 15 U.S.C. § 1, and with one count of conspiracy to  
5 commit mail fraud in violation of 18 U.S.C. § 1349. This  
6 document contains the complete Plea and Cooperation Agreement  
7 between the United States Attorney's Office for the Eastern  
8 District of California and the United States Department of  
9 Justice, Antitrust Division (collectively the "government"), and  
10 the defendant regarding this case. This Plea and Cooperation  
11 Agreement is limited to the United States Attorney's Office for  
12 the Eastern District of California and the United States  
13 Department of Justice, Antitrust Division, and cannot bind any  
14 other federal, state, or local prosecuting, administrative, or  
15 regulatory authorities.  
16  
17

18       B. Court Not a Party: The Court is not a party to this  
19 Plea and Cooperation Agreement. Sentencing is a matter solely  
20 within the discretion of the Court, the Court is under no  
21 obligation to accept any recommendations made by the government,  
22 and the Court may in its discretion impose any sentence it deems  
23 appropriate, up to and including the statutory maximum stated in  
24 this Plea and Cooperation Agreement. If the Court should impose  
25 any sentence up to the maximum established by the statute, the  
26 defendant cannot, for that reason alone, withdraw his guilty  
27 plea, and he will remain bound to fulfill all of the obligations  
28

1 under this Plea and Cooperation Agreement. The defendant  
2 understands that neither the government, defense counsel, nor the  
3 Court can make a binding prediction or promise regarding the  
4 sentence he will receive.

5  
6 II.

7 DEFENDANT'S OBLIGATIONS

8 A. Waiver of Indictment and Guilty Plea: The defendant  
9 will waive indictment by grand jury, waive venue, and plead  
10 guilty to a two-count Information, substantially in the form  
11 attached hereto as Exhibit B, charging him with conspiring to rig  
12 bids in violation of 15 U.S.C. § 1 and conspiracy to commit mail  
13 fraud in violation of 18 U.S.C. § 1349. The defendant agrees  
14 that he is, in fact, guilty of those charges and that the facts  
15 set forth in the Factual Basis attached hereto as Exhibit A are  
16 true and accurate.

17  
18 B. Restitution: The Mandatory Victim Restitution Act  
19 requires the Court to order restitution to the victims of certain  
20 offenses. Payment should be made at such times and in such  
21 amounts as ordered by the Court, and should be by cashier's or  
22 certified check made payable to the Clerk of the Court. The  
23 government and defendant agree to recommend that the Court order  
24 defendant to pay restitution in the amount of \$349,260. The  
25 defendant understands that this Plea and Cooperation Agreement is  
26 voidable by the government if he fails to pay the restitution as  
27 ordered by the Court. Defendant further agrees that he will not  
28

1 seek to discharge any restitution obligation or any part of such  
2 obligation in any bankruptcy proceeding.

3       **C. Special Assessment:** The defendant agrees to pay a  
4 special assessment of \$100 for each count (total of \$200)  
5 immediately before the sentencing hearing by delivering a check  
6 or money order to the United States Probation Office payable to  
7 the United States District Court.  
8

9       **D. Agreement to Cooperate:** The defendant agrees to  
10 cooperate fully with the government and any other federal, state,  
11 or local law enforcement agency, as directed by the government.  
12 As used in this Agreement, "cooperation" requires the defendant:  
13 (1) to respond truthfully and completely to all questions,  
14 whether in interviews, in correspondence, telephone  
15 conversations, before a grand jury, or at any trial or other  
16 court proceeding; (2) to attend all meetings, grand jury  
17 sessions, trials, and other proceedings at which the defendant's  
18 presence is requested by the government or compelled by subpoena  
19 or court order; (3) to produce voluntarily any and all documents,  
20 records, or other tangible evidence requested by the government;  
21 (4) not to participate in any criminal activity while cooperating  
22 with the government; and (5) to disclose to the government the  
23 existence and status of all money, property, or assets, of any  
24 kind, derived from or acquired as a result of, or used to  
25 facilitate the commission of, the defendant's illegal activities  
26 or the illegal activities of any conspirators.  
27  
28

1        If the defendant commits any crimes or if any of the  
2 defendant's statements or testimony prove to be knowingly false,  
3 misleading, or materially incomplete, or if the defendant  
4 otherwise violates this Plea and Cooperation Agreement in any  
5 way, the government will no longer be bound by its  
6 representations to the defendant concerning the limits on  
7 criminal prosecution and sentencing as set forth herein. The  
8 determination whether the defendant has violated the Plea and  
9 Cooperation Agreement will be under a preponderance-of-the-  
10 evidence standard. If the defendant violates the Plea and  
11 Cooperation Agreement, he shall thereafter be subject to  
12 prosecution for any federal criminal violation of which the  
13 government has knowledge, including but not limited to perjury,  
14 false statements, and obstruction of justice. Because  
15 disclosures pursuant to this Agreement will constitute a waiver  
16 of the Fifth Amendment privilege against compulsory self-  
17 incrimination, any such prosecution may be premised on statements  
18 and/or information provided by the defendant. Moreover, any  
19 prosecutions that are not time-barred by the applicable statute  
20 of limitations as of the date of this Agreement may be commenced  
21 in accordance with this paragraph, notwithstanding the expiration  
22 of the statute of limitations between the signing of this  
23 Agreement and the commencement of any such prosecutions. The  
24 defendant agrees to waive all defenses based on the statute of  
25 limitations or delay of prosecution with respect to any

1 prosecutions that are not time-barred as of the date of this  
2 Agreement.

3       If it is determined that the defendant has violated any  
4 provision of this Agreement or if the defendant successfully  
5 moves to withdraw his plea: (1) all statements made by the  
6 defendant to the government or other designated law enforcement  
7 agents, or any testimony given by the defendant before a grand  
8 jury or other tribunal, whether before or after this Agreement,  
9 shall be admissible in evidence in any criminal, civil, or  
10 administrative proceedings hereafter brought against the  
11 defendant; and (2) the defendant shall assert no claim under the  
12 United States Constitution, any statute, Rule 11(f) of the  
13 Federal Rules of Criminal Procedure, Rule 410 of the Federal  
14 Rules of Evidence, or any other federal rule, that statements  
15 made by the defendant before or after this Agreement, or any  
16 leads derived therefrom, should be suppressed. By signing this  
17 Agreement, the defendant waives any and all rights in the  
18 foregoing respects.

21       **E. Payment of Fine:** The defendant agrees to pay a criminal  
22 fine of \$20,000 if so ordered by the Court. Defendant  
23 understands that the criminal fine ordered by the Court may be  
24 based upon the defendant's ability to pay a criminal fine in  
25 addition to restitution as agreed upon and set forth in this Plea  
26 and Cooperation Agreement and as determined by the United States  
27 Probation Office. The government's recommendation with respect  
28

1 to any such criminal fine is set forth in paragraph III. D. of  
2 this Plea and Cooperation Agreement.

3  
4 **III.**

5 **THE GOVERNMENT'S OBLIGATIONS**

6 **A. Incarceration Range:** The government will recommend that  
7 the defendant be sentenced to the bottom of the applicable  
8 Guideline range for his offense, as determined by the United  
9 States Probation Office.

10 **B. Acceptance of Responsibility:** The government agrees that  
11 a three-level reduction in defendant's offense level for his full  
12 and clear demonstration of acceptance of responsibility is  
13 appropriate under United States Sentencing Guidelines (U.S.S.G.)  
14 § 3E1.1, will not oppose such a reduction, and will so move under  
15 § 3E1.1(b), so long as the defendant pleads guilty, meets with  
16 and assists the probation officer in the preparation of the pre-  
17 sentence report, is truthful and candid with the probation  
18 officer and the Court, and does not otherwise engage in conduct  
19 that constitutes obstruction of justice within the meaning of  
20 U.S.S.G. § 3C1.1, either in the preparation of the pre-sentence  
21 report or during the sentencing proceeding.

22  
23  
24 **C. Reduction of Sentence for Cooperation:** The government  
25 agrees to recommend at the time of sentencing that the  
26 defendant's sentence of imprisonment be reduced to reflect his  
27 substantial assistance to the government in the investigation and  
28 prosecution of others, pursuant to U.S.S.G. § 5K1.1. The

1 defendant understands that he must comply with paragraph II. D.  
2 of this Plea and Cooperation Agreement. The defendant  
3 understands that the government's recommended reduction in his  
4 sentence will depend upon the level of assistance the government  
5 determines that the defendant has provided. The defendant  
6 further understands that a motion pursuant to U.S.S.G. § 5K1.1 is  
7 only a recommendation and is not binding on the Court.  
8

9 Other than as set forth above, the government agrees that  
10 any incriminating information provided by the defendant during  
11 his cooperation will not be used in determining the applicable  
12 Guideline range in his case, pursuant to U.S.S.G. § 1B1.8.  
13

14 D. Fine: The government agrees to recommend that the  
15 defendant be ordered to pay a fine of \$20,000 pursuant to  
16 U.S.S.G. § 2R1.1(c)(1) or other amount as recommended by the  
17 United States Probation Office.

#### 18 IV.

#### 19 ELEMENTS OF THE OFFENSE

20 Had this case gone to trial, the government would have to  
21 prove beyond a reasonable doubt the following elements:  
22

23 For Count One, Sherman Act:

24 First, that the defendant entered into a conspiracy;

25 Second, that the conspiracy was an unreasonable restraint of  
26 trade; and

27 Third, that the conspiracy was in or affected interstate  
28 commerce in the United States.



1 For Count Two, Conspiracy to Commit Mail Fraud:

2 First, that the defendant knowingly devised or participated  
3 in a conspiracy to defraud or to obtain money or property by  
4 means of materially false pretenses, representations, or  
5 promises;  
6

7 Second, the defendant knew that the scheme was deceptive or  
8 that the pretenses, representations, or promises were false;

9 Third, that the defendant did so with the intent to defraud;  
10 and

11 Fourth, for the purpose of carrying out the scheme or  
12 attempting to do so, the defendant knowingly used and caused to  
13 be used the United States mails or private or commercial carrier  
14 in the manner charged.  
15

16 V.

17 MAXIMUM SENTENCE

18 A. Maximum Penalty: For Count One, the maximum sentence the  
19 Court can impose for a violation of 15 U.S.C. § 1 is ten years  
20 incarceration; a fine in an amount equal to the greatest of (1)  
21 \$1,000,000, (2) twice the gross pecuniary gain the conspirators  
22 derived from the crime, or (3) twice the gross pecuniary loss  
23 caused to the victims of the crime by the conspirators; a three-  
24 year period of supervised release; and a special assessment of  
25 \$100. For Count Two, the maximum sentence the Court can impose  
26 for a violation of 18 U.S.C. § 1349 is 30 years incarceration; a  
27 fine of \$1,000,000; a five-year period of supervised release; and  
28

1 a special assessment of \$100.

2       **B. Violations of Supervised Release:** The defendant  
3 understands that if he violates a condition of supervised release  
4 at any time during the term of supervised release, the Court may  
5 revoke the term of supervised release and require the defendant  
6 to serve up to two additional years of imprisonment.  
7

8                               **VI.**

9                               **SENTENCING DETERMINATION**

10       **A. Statutory Authority:** The defendant understands that the  
11 Court must consult the Federal Sentencing Guidelines (as  
12 promulgated by the Sentencing Commission pursuant to the  
13 Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28  
14 U.S.C. §§ 991-998, and as modified by United States v. Booker and  
15 United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738 (2005)) and  
16 must take them into account when determining a final sentence.  
17 The defendant understands that the Court will determine a non-  
18 binding and advisory Guideline sentencing range for this case  
19 pursuant to the Sentencing Guidelines. The defendant further  
20 understands that the Court will consider whether there is a basis  
21 for departure from the Guideline sentencing range (either above  
22 or below the Guideline sentencing range) because there exists an  
23 aggravating or mitigating circumstance of a kind, or to a degree,  
24 not adequately taken into consideration by the Sentencing  
25 Commission in formulating the Guidelines. The defendant further  
26 understands that the Court, after consultation and consideration  
27  
28

1 of the Sentencing Guidelines, must impose a sentence that is  
2 reasonable in light of the factors set forth in 18 U.S.C.  
3 § 3553(a).

4       **B. Stipulations Affecting Guidelines Calculations:** The  
5 government and the defendant agree that there is no material  
6 dispute as to the following Sentencing Guidelines variables and  
7 therefore stipulate and agree to the following:  
8

9 For Count One:

10	§ 2R1.1(a)	Base Offense Level	12
11	(b) (1)	Bid Rigging	+1
12	(b) (2) (B)	Volume of Commerce > \$10 million	+4
13		Total	17
14	(c) (1)	Fine 1 - 5% of \$11.7 million	

15  
16 For Count Two:

17	§2B1.1(a) (1)	Base Offense Level	7
18	(b) (1) (D)	Loss > \$200,000	+12
19		Total	19

20 The Guidelines calculation results in an offense level of 19 for  
21 a jail term of 30 to 37 months and a maximum fine of \$1 million.

22  
23       **1. Aggravating Role in Offense:** Because the defendant  
24 served as a manager or supervisor with respect to the criminal  
25 activity charged, pursuant to § 3B1.1(b), the defendant's offense  
26 level is increased by 3 levels.

27       **2. Total Offense Level:** Pursuant to the foregoing  
28 stipulations, defendant's total offense level is 22.

1           3.   Acceptance of Responsibility: Pursuant to § 3E1.1  
2 and as described in more detail in paragraph III(B) above, the  
3 defendant's total offense level is decreased by three levels  
4 because of his acceptance of responsibility. The Adjusted Total  
5 Offense Level is therefore 19.  
6

7           4.   Criminal History: The parties agree that the  
8 defendant's criminal history is to be determined by the United  
9 States Probation Office.

10           5.   Departures or Other Enhancements or Reductions:  
11 The parties stipulate and agree that they will not seek or argue  
12 in support of any other specific offense characteristics, Chapter  
13 Three adjustments, departures, or cross-references, other than  
14 those contemplated in the foregoing stipulations. Defense  
15 counsel may argue for a variance or deviation from the Sentencing  
16 Guidelines under 18 U.S.C. § 3553(a). The government reserves  
17 its right to oppose such deviation or variance. If either party  
18 breaches this provision, the other party shall be relieved of all  
19 of its obligations under this Plea and Cooperation Agreement.  
20  
21

## 22                   VII.

### 23                   WAIVERS

24           A.   Waiver of Constitutional Rights: The defendant  
25 understands that by pleading guilty he is waiving the following  
26 constitutional rights: (a) to plead not guilty and to persist in  
27 that plea if already made; (b) to be tried by a jury; (c) to be  
28 assisted at trial by an attorney, who would be appointed if

1 necessary; (d) to subpoena witnesses to testify on his behalf;  
2 (e) to confront and cross-examine witnesses against him; and  
3 (f) not to be compelled to incriminate himself.

4       **B. Waiver of Appeal and Collateral Attack:** The defendant  
5 understands that the law gives him a right to appeal his  
6 conviction and sentence. He agrees as part of his plea, however,  
7 to give up the right to appeal the conviction and the right to  
8 appeal any aspect of the sentence imposed in this case so long as  
9 his sentence is no longer than the top of the Sentencing  
10 Guidelines range determined by the Court, consistent with the  
11 stipulations set forth above about the Sentencing Guidelines  
12 variables.  
13

14       Regardless of the sentence he receives, the defendant also  
15 gives up any right he may have to bring a post-appeal attack on  
16 his conviction or his sentence. He specifically agrees not to  
17 file a motion under 28 U.S.C. § 2255 or § 2241 attacking his  
18 conviction or sentence.  
19

20       If the defendant ever attempts to vacate his plea, dismiss  
21 the underlying charges, or reduce or set aside his sentence on  
22 any of the counts to which he is pleading guilty, the government  
23 shall have the right to: (1) prosecute the defendant on any of  
24 the counts to which he pleaded guilty; (2) reinstate any counts  
25 that may be dismissed pursuant to this Plea and Cooperation  
26 Agreement; and (3) file any new charges that would otherwise be  
27 barred by this Plea and Cooperation Agreement. The decision to  
28

1 pursue any or all of these options is solely in the discretion of  
2 the United States Attorney's Office and the Department of  
3 Justice, Antitrust Division. By signing this Plea and  
4 Cooperation Agreement, the defendant agrees to waive any  
5 objections, motions, and defenses he might have to the  
6 government's decision. In particular, he agrees not to raise any  
7 objections based on the passage of time with respect to such  
8 counts, including, but not limited to, any statutes of limitation  
9 or any objections based on the Speedy Trial Act or the Speedy  
10 Trial Clause of the Sixth Amendment.  
11

12       **C. Waiver of Attorneys' Fees and Costs:** The defendant  
13 agrees to waive all rights under the "Hyde Amendment," Section  
14 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or  
15 other litigation expenses in connection with the investigation  
16 and prosecution of all charges in the above-captioned matter and  
17 of any related allegations.  
18

19                               **VIII.**

20                               **ENTIRE PLEA AND COOPERATION AGREEMENT**

21       Other than this Plea and Cooperation Agreement, no  
22 agreement, understanding, promise, or condition between the  
23 government and the defendant exists, nor will such agreement,  
24 understanding, promise, or condition exist unless it is committed  
25 to writing and signed by the defendant, counsel for the  
26

27 //

28 //

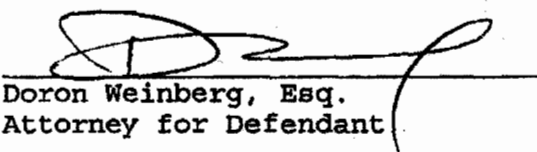
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defendant, and counsel for the government.

IX.

APPROVALS AND SIGNATURES

A. Defense Counsel: I have read this Plea and Cooperation Agreement and have discussed it fully with my client. The Plea and Cooperation Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this Plea and Cooperation Agreement.

DATED: 1/26/11

  
Doron Weinberg, Esq.  
Attorney for Defendant

B. Defendant: I have read this Plea and Cooperation Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea and Cooperation Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea and Cooperation Agreement. Finally, I am satisfied with the

//

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1 //

2

3

representation of my attorney in this case.

4

5

DATED: 1/22/11

  
RICHARD W. NORTH CUTT, Defendant

6

7

8

9

C. Attorneys for the Government: The undersigned accept and agree to this Plea and Cooperation Agreement on behalf of the government.

10

11

12

13

DATED: \_\_\_\_\_

BENJAMIN B. WAGNER  
United States Attorney

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15

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By: \_\_\_\_\_

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RUSSELL L. CARLBERG  
Assistant U.S. Attorney

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19

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CHRISTINE A. VARNEY  
Assistant Attorney General

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22

23

By: \_\_\_\_\_  
BARBARA J. NELSON  
RICHARD B. COHEN  
ALBERT B. SAMBAT  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division

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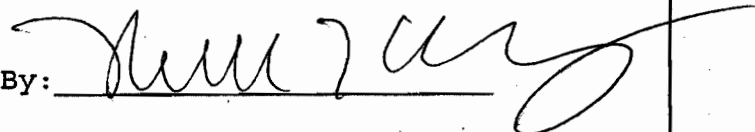


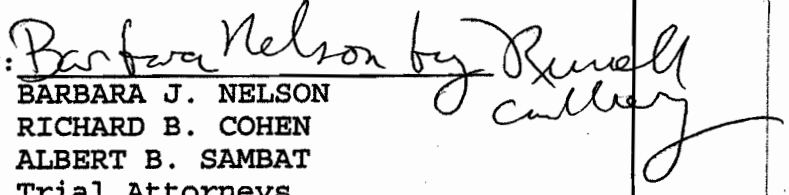
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representation of my attorney in this case.

DATED: \_\_\_\_\_  
RICHARD W. NORTHCUTT, Defendant

C. Attorneys for the Government: The undersigned accept and agree to this Plea and Cooperation Agreement on behalf of the government.

DATED: Jan 28, 2011  
BENJAMIN B. WAGNER  
United States Attorney

By:   
RUSSELL L. CARLBERG  
Assistant U.S. Attorney

CHRISTINE A. VARNEY  
Assistant Attorney General  
By:   
BARBARA J. NELSON  
RICHARD B. COHEN  
ALBERT B. SAMBAT  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division

1                                   **EXHIBIT "A"**  
2                                   **Factual Basis for Plea**

3                                   **Bid Rigging**

4           At trial, the government would prove the following facts  
5           beyond a reasonable doubt:

6           Beginning in or about September 2008 and continuing until in  
7           or about October 2009 (relevant period), defendant participated  
8           in a conspiracy to rig bids at public real estate auctions held  
9           in San Joaquin County, California, located in the Eastern  
10          District of California. The primary purpose of this conspiracy  
11          was to suppress and restrain competition and obtain selected real  
12          estate offered at San Joaquin County public auctions at non-  
13          competitive prices. During the relevant period, defendant and  
14          his co-conspirators reached agreements not to bid against one  
15          another and to allocate properties among themselves. To carry  
16          out their agreements, defendant and his co-conspirators refrained  
17          from bidding or refrained from bidding up the price for auctioned  
18          properties. In many instances, defendant and his co-conspirators  
19          held private auctions, open only to members of the conspiracy, to  
20          rebid the property. Defendant and his co-conspirators awarded  
21          the property to the conspirators who submitted the highest bid at  
22          the private auctions. Defendant and his co-conspirators  
23          distributed the proceeds of the private auctions as payoffs to  
24          the other, unsuccessful bidders in the private auction, based  
25          upon a predetermined formula agreed upon by the members of the  
26          conspiracy, for refraining from bidding on the property at the  
27          public auction.

19          During the relevant period, the business activities of the  
20          defendant and co-conspirators were within the flow of, and  
21          substantially affected, interstate trade and commerce. For  
22          example, mortgage holders located in states other than California  
23          held mortgages, appointed trustees, and received proceeds from  
24          the public auctions that were subject to the bid-rigging  
25          agreement.

23                                   **Conspiracy to Commit Mail Fraud**

24          Beginning in or about September 2008 and continuing until in  
25          or about October 2009 (relevant period), defendant knowingly  
26          devised or participated in a conspiracy to defraud or to obtain  
27          money or property by means of materially false pretenses,  
28          representations, or promises from the mortgage holders and owners  
29          of properties that were being sold at public real estate  
30          foreclosure auctions in the Eastern District of California. That  
31          conspiracy to defraud consisted of suppressing competition at the

1 public auction of properties by agreeing not to bid against one  
2 another at the public auction, by acquiring the property at a  
3 lower price than would have resulted from a fully competitive  
4 auction, and by holding a second, private auction and dividing  
5 the profits of the scheme (the difference between the public and  
6 private auction prices) among themselves. In other words, the  
7 participants intentionally manipulated the sales price of  
8 properties, causing false, artificially low sales prices to be  
9 reported and paid to victims of the scheme.

10 The defendant and others, for the purpose of executing the  
11 conspiracy described above and attempting to do so, knowingly  
12 used and caused to be used the United States mails or private or  
13 commercial carrier. For example, trustees and government  
14 agencies used the United States mail to transmit grant deeds and  
15 other title documents to participants in the conspiracy to  
16 defraud. These mailings were foreseeable to defendant in the  
17 ordinary course of business.