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

Attorneys for the United States

FILED
SEP 30 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CR11-00722 CW

UNITED STATES OF AMERICA v. TIMOTHY POWERS, Defendant.	Criminal No. **INFORMATION** VIOLATIONS: 15 U.S.C. § 1 – Bid Rigging (Count One); 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud (Count Two)

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

TIMOTHY POWERS,

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

THE COMBINATION AND CONSPIRACY

2. Beginning as early as May 2009 and continuing until in or about December 2010, the defendant TIMOTHY POWERS and co-conspirators entered into and engaged in a combination and conspiracy to suppress and restrain competition by rigging bids to obtain title to selected real estate offered at Contra Costa County 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 to suppress competition by agreeing to refrain from or stop bidding against each other to obtain title to selected real estate offered at Contra Costa County public real estate foreclosure auctions at non-competitive 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, not to compete for title to selected real estate offered at Contra Costa County public real estate foreclosure auctions;

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

c. refraining from or stopping bidding for the selected real estate at the public real estate foreclosure auctions.

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.

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

THE CONSPIRACY

8. Beginning as early as May 2009 and continuing until in or about December 2010 in Contra Costa County in the Northern District of California, the defendant TIMOTHY POWERS 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 and participate in a scheme or artifice to defraud financial institutions, homeowners, and others, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises.

9. The objects of the conspiracy were to make payoffs to obtain title to selected real estate at fraudulently suppressed prices, to receive payoffs, and to divert money to co-conspirators and away from the mortgage holders and others with a legal interest in select properties sold at public real estate foreclosure auctions in Contra Costa County, California ("mortgage holders").

MEANS AND METHODS

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

10. 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. purchasing selected real estate at fraudulently suppressed prices;

b. in some instances, negotiating payoffs with one or more co-conspirators not to compete;

c. in many other instances, holding second, private auctions, at or near the courthouse steps where the public auctions were held, open only to members of the conspiracy, to bid for title to the selected real estate;

d. awarding the selected real estate to the conspirators who submitted the highest bids at the second, private auctions;

e. transferring the right to title to the selected real estate into the names of the conspirators who submitted the highest bids at the second, private auctions;

f. paying co-conspirators monies that otherwise would have gone to mortgage holders, using either a predetermined formula based on the bidding at the second, private auction or through direct negotiations among the co-conspirators;

g. taking steps to conceal both the fact that payoffs were made and the amounts of the payoffs;

h. making and causing to be made false and misleading statements on records of public auctions regarding the total purchase price of the selected real estate sold at public foreclosure auctions; and

i. causing the fraudulently suppressed purchase price to be reported and paid to the mortgage holders.

11. For the purpose of executing the scheme or 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 or private or commercial interstate carriers. For example, trustees used the United States mail and Federal Express 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.

JURISDICTION AND VENUE

12. 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.

Sharis A. Pozen
Acting 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 F. 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