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OAKLAND

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

SBA

CR11-00426

13		) Criminal No.
14	UNITED STATES OF AMERICA	)
15	v.	) INFORMATION
16	THOMAS FRANCIOSE,	) VIOLATIONS: 15 U.S.C. § 1 –
17	Defendant.	) Bid Rigging (Count One);
18		) 18 U.S.C. § 1349 – Conspiracy to
19		) Commit Mail Fraud (Count Two)
		)
		)

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

21 THOMAS FRANCIOSE,

22 the defendant herein, as follows:

23 BACKGROUND

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

1 remaining from the sale are then paid to the homeowner.

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

3 THE COMBINATION AND CONSPIRACY

4 2. Beginning as early as February 2009 and continuing until in or about October  
5 2010, the defendant THOMAS FRANCIOSE and co-conspirators entered into and engaged in a  
6 combination and conspiracy to suppress and restrain competition by rigging bids to obtain  
7 selected real estate offered at Alameda County, California public real estate foreclosure auctions  
8 in the Northern District of California, in unreasonable restraint of interstate trade and commerce,  
9 in violation of the Sherman Act, Title 15, United States Code, Section 1.

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

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

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

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

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

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

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

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

INFORMATION – FRANCIOSE – 2

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

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

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

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

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

14 TRADE AND COMMERCE

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

20 JURISDICTION AND VENUE

21 7. The combination and conspiracy charged in this Information was carried out, in  
22 part, in the Northern District of California, within the five years preceding the filing of this  
23 Information.

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

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

26 THE CONSPIRACY

27 8. Beginning as early as February 2009 and continuing until in or about October  
28 2010 in Alameda County in the Northern District of California, the defendant THOMAS

INFORMATION – FRANCIOSE – 3

1 FRANCIOSE and co-conspirators did willfully and knowingly combine, conspire, and agree  
2 with each other to violate Title 18, United States Code, Section 1341, namely, to knowingly  
3 devise and intend to devise a material scheme or artifice to defraud financial institutions and  
4 others and to obtain money and property by materially false and fraudulent pretenses and, for the  
5 purpose of executing or attempting to execute such scheme or artifice, to knowingly use and  
6 cause to be used the United States Postal Service or any private or commercial interstate carrier,  
7 in violation of Title 18, United States Code, Section 1349.

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

19 MEANS AND METHODS

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

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

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

28 ///

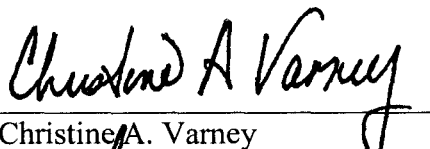
OVERT ACTS

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.

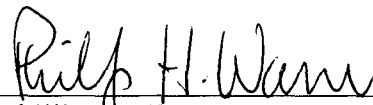
JURISDICTION AND VENUE

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.

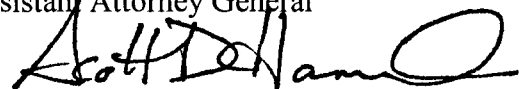
ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1349.



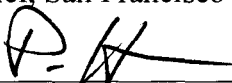
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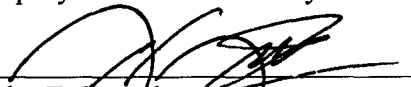
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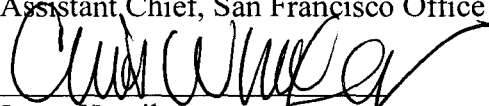
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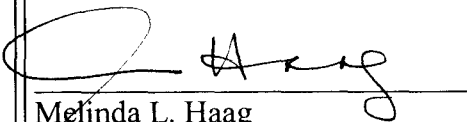
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