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NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA v. GARRY WAN, Defendant.	Criminal No. CR14-00604 JD **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:

GARRY WAN,

the defendant herein, as follows:

BACKGROUND

1. At all times relevant to this Information, when California homeowners defaulted on their mortgages, mortgage holders could institute foreclosure proceedings and sell the properties through non-judicial public real estate foreclosure auctions ("public auctions"). These public auctions were governed by California Civil Code, Section 2924, *et seq.* Typically, a trustee was appointed to oversee the public auctions. These public auctions usually took place at

or near the courthouse of the county in which the properties were located. The auctioneer, acting on behalf of the trustee, sold the property to the bidder offering the highest purchase price. Proceeds from the sale were then used to pay the mortgage holders, other holders of debt secured by the property, and, in some cases, the defaulting homeowner (collectively, "beneficiaries").

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

THE COMBINATION AND CONSPIRACY

2. Beginning as early as May 2008 and continuing until in or about January 2011, the defendant, GARRY WAN, and co-conspirators entered into and engaged in a combination and conspiracy to suppress and restrain competition by rigging bids to obtain selected properties offered at public auctions in Alameda County 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 his co-conspirators to suppress competition by agreeing to refrain from or stop bidding against each other to purchase selected properties at public auctions in Alameda County at non-competitive prices.

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

a. agreeing not to compete to purchase selected properties at public auctions in Alameda County;

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

c. refraining from or stopping bidding for the selected properties at the public auctions.

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5. Various entities and individuals not made defendants in this Count participated as co-conspirators in the offense charged and performed acts and made statements in furtherance thereof.

TRADE AND COMMERCE

6. During the period covered by this Information, the business activities of the defendant and his co-conspirators that are the subject of this Information were within the flow of, and substantially affected, interstate trade and commerce. For example, beneficiaries located in states other than California received proceeds from the public 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 2008 and continuing until in or about January 2011 in Alameda County in the Northern District of California, the defendant, GARRY WAN, and his 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 and artifice to defraud beneficiaries, and to obtain money and property from beneficiaries by means of materially false and fraudulent pretenses, representations, and promises.

9. The objects of the conspiracy were to fraudulently acquire title to selected properties sold at public auctions in Alameda County, to make and receive payoffs, and to divert money to conspirators that would have gone to the beneficiaries.

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10. Various entities and individuals not made defendants in this Count participated as co-conspirators in the offense charged and performed acts and made statements in furtherance thereof.

MEANS AND METHODS

11. For the purpose of forming and carrying out the charged conspiracy, the defendant and his co-conspirators did those things that they conspired to do, including, among other things:

a. purchasing selected properties at public auctions at suppressed prices;

b. in some instances, negotiating payoffs with one or more 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, frequently referred to as "rounds," open only to members of the conspiracy, to bid for title to the selected properties;

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

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

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

g. taking steps to conceal the fact that monies were diverted from the beneficiaries to the conspirators;

h. making and causing to be made materially false and misleading statements on records of public auctions that trustees relied upon to distribute proceeds from the public auction to the beneficiaries and convey title to properties sold at the public auction; and

i. causing the suppressed purchase price to be reported and paid to the beneficiaries.

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12. For the purpose of executing the scheme and artifice to defraud and attempting to do so, the defendant and his co-conspirators knowingly used and caused to be used the United States Postal Service and private or commercial interstate carriers. For example, trustees used the United States mail and private or commercial interstate carriers 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

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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