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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. TODD JEREMY RICE, Defendant.	CR 07-12-H-CCL <u>OFFER OF PROOF</u>
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Todd Jeremy Rice appears before the Court to enter a plea of Guilty to Count I of the Indictment. The United States, by and through its counsel, Carl E. Rostad, Assistant U.S. Attorney for the District of Montana, submits this Offer of Proof to provide the factual basis for the defendant's plea.

ELEMENTS:

First, that Todd Jeremy Rice made up a scheme to defraud and obtain monies or property from companies that purchase mortgages on the secondary market, including Washington Mutual Bank, F.A., WMC Mortgage, Corp., and Argent Mortgage Co.,

Second, that Todd Jeremy Rice knew that the promises or statements were false;

Third, the promises or statements were material, that is they would reasonably influence a person to part with money or property;

Fourth, that Todd Jeremy Rice acted with intent to defraud; and

Fifth, that Todd Jeremy Rice used, or caused to be used, the interstate wire communications, signals, or impulses to carry out or attempt to carry out an essential part of the scheme.

FACTUAL BASIS:

If called upon to prove this case at trial, the United States would present evidence of the following events:

In 2004, Helena mortgage broker S.H. was introduced by a local realtor to Todd Rice. Beginning in October of 2004, S.H. assisted Rice in obtaining 100% financing on four residential properties in the Helena, Montana area.

S.H. worked for a company called TriWest Mortgage. As a mortgage broker, S.H. was the first in a financial chain that supports the real estate industry. The mortgage broker solicits the business of home buyers who use the services of the mortgage broker to finance the purchase of homes or other property. The mortgage

broker collects information about value of the property and about the home buyer to determine credit worthiness, net worth, income stream, credit risk, amount of down payment or other equitable contribution, and other variables that may affect the ability of the home buyer to pay a mortgage of a certain amount and amortized life span. Once the mortgage is approved, the mortgage broker “sells” the mortgage on a secondary market to other lenders who rely on the information contained in the initial mortgage file to determine the risk-to-reward ratio of the mortgage package. Riskier borrowers are generally charged a higher interest rate as an off-set against the likelihood that they may become delinquent or default on the loan. Customers with lower levels of risk generally obtain a better interest rate as the risk of default or delinquency is more remote. Mortgage brokers make their money by earning commissions on the number and size of the loans that they arrange. The business for whom the broker works usually makes a profit based upon the premium paid on the secondary market, which is usually reflected in a discounted value of the mortgage relative to its duration.

The indictment, the language of which is incorporated into the plea agreement, is technically incorrect. The loan broker does not lend money to a borrower. The broker merely puts the loan package together and then “sells” it to a secondary market who actually provides the financing once the loan package is “purchased.”

Between October 2004 and October 2005, S.H. brokered mortgages for Rice’s purchase of four residences in the Helena area: (a) 350 Woodson Rd.; (b) 1560 Gallatin Ave.; (c) 1306-1308 Poplar St.; and, (d) 8560 Applegate Drive. The total mortgage liability was over \$686,000. All properties were financed to 100% of their

value. Rice did not have sufficient income to justify the mortgage exposure caused by any one of these mortgages, much less all of them.

Fictitious income documentation was created and placed in the mortgage file. Using his computer, S.H. generated counterfeit W-2 forms and wage statements that indicated that Rice was employed by either Davron Telco (2002-2003) or Northwest Wireless (2004-2005). The mortgage file reflected that Rice was employed by Davron in 2002 and had made \$51,975, when in truth, Rice had not worked for Davron. False documents attached to the file indicated that Rice had made \$54,926 from employment with Davron in 2003, when in truth, Rice had not worked for Davron and had a reported gross income of only \$28,515 in 2003. The paperwork indicated that in 2004, Rice earned \$67,815 from Northwest Wireless, when in truth, Rice had not worked for Northwest Wireless in 2004 and had a reported gross income of only \$19,170 for that year. Finally, S.H. put documentation – a purported wage and earnings statement – into the mortgage files indicating that Rice had been paid by Northwestern Wireless \$48,489 as of August 31, 2005, when in truth Rice had not been paid any wages by Northwestern Wireless.

A borrower who is going to use the purchased property for his own personal residence can, under certain circumstances, qualify for 100% financing, meaning that the borrower need not put any of his or her own money into the property for equity and could still qualify for a mortgage saleable on the secondary market. For the purchase of all of the properties discussed, Rice represented on, and signed, Fannie Mae Forms 1003, Occupancy Statements and Loan Applications, that each residence would be his primary home. In addition, he made the same representation in the purchase of two

other Helena properties through another mortgage broker: (e) 3890 Kitt Dr., purchased September 9, 2005; and, (f) 8142 Buffalo Horn Dr., purchased June 28, 2006. In truth, except as necessary to make minor repairs, Rice never occupied the residences and rented them out, placing the ultimate purchasers of the mortgage fraudulently obtained at greater risk, and getting a better interest rate than would have been negotiated had the two men been honest in their representations as to occupancy (as to the four residences – and Rice alone on the purchase of (e) and (f)). Persons who occupy the property being purchased generally receive a more favorable interest rate than those purchasers obtaining property for income generation.

The purchase of the Kitt Drive and Buffalo Horn Drive properties did not appear to contain other material false statements.

Three separate mortgage companies purchased the mortgages on the secondary market. Representatives of each company have confirmed that had they been aware of the falsifications in the mortgage files, they would not have funded the mortgage proposals for these properties. Using that as a guide to loss on the four properties charged in the indictment, loss is \$686,000, more or less, to the mortgage companies and over \$11,242 to TriWest (being the commissions they paid S.H. for the fraudulent mortgage packages which they obviously would not have paid him had the mortgages not been purchased by the secondary lenders).

If compelled to fund the mortgages, the companies would have charged higher rates of interest. Using that as a basis for loss on the properties (a) through (d), the secondary mortgage companies would have lost \$70,139.

The funds to pay for these mortgages were all transmitted through interstate wire.

DATED this 1st day of October, 2007.

WILLIAM W. MERCER
United States Attorney

/s/ Carl E. Rostad
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Assistant U.S. Attorney
Attorneys for Plaintiff