UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2006 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. JOSEPH ARAM BABAJIAN, KYLE JOHN GRASSO, LILA RIZK, and L. SCOTT ROBINSON, Defendants.	CR No. 07- 07-00755 **I N D I C T M E N T** [18 U.S.C. § 371: Conspiracy; 18 U.S.C. § 1344(1): Bank Fraud; 18 U.S.C. § 1014: Loan Fraud; 18 U.S.C. § 1956(a)(1): Money Laundering; 18 U.S.C. § 982, 21 U.S.C. § 853: Criminal Forfeiture; 18 U.S.C. § 2: Aiding And Abetting And Causing An Act To Be Done]

The Grand Jury charges:

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INTRODUCTORY ALLEGATIONS

I. SUMMARY OF THE FRAUD

1. Beginning in about July 2000, and continuing through at least January 2003, defendants JOSEPH ARAM BABAJIAN, KYLE JOHN GRASSO, LILA RIZK, and L. SCOTT ROBINSON, working with Beverly Hills mortgage brokers, the brokers' employees and in-house escrow officer, a Westside mortgage banker, and others, perpetrated a scheme to defraud federally-insured lenders out of tens of millions of dollars by obtaining fraudulently inflated loans on expensive homes in exclusive California communities.

II. THE VICTIM LENDERS AND THEIR LOAN PRODUCTS

A. Lehman Brothers Bank, FSB

2. During the times relevant to this Indictment:

a. The accounts and deposits of Lehman Brothers Bank, FSB ("Lehman") were insured by the Federal Deposit Insurance Corporation.

b. Lehman made loans directly to home buyers and also bought home loans from other lenders after the other lenders had funded them. Lehman's lending agent was Aurora Loan Services ("Aurora"). Aurora established criteria to be applied for Lehman to fund or purchase home loans, and approved or rejected home loan applications on behalf of Lehman.

c. Aurora received loan application packages from correspondents and mortgage brokers, among other sources. Correspondents were generally mortgage banking companies that gathered information from prospective borrowers and sent loan application packages to Aurora for review. After Aurora approved the loans and Lehman committed to buy them, the correspondents initially funded the loans and then sold them to Lehman. Mortgage brokers also gathered information from prospective borrowers and sent loan application packages to Aurora for review through Aurora's mortgage broker division known as Broker Funding Solutions ("BFS"). After Aurora approved loan applications sent by mortgage brokers, Lehman funded the loans directly and paid commissions to the mortgage brokers.

d. Aurora, on behalf of Lehman, offered no-document home loans up to $1,500,000. Home buyers applying for no-document home loans generally did not have to disclose their income, employment, assets, or tax returns. Aurora's requirements for no-document home loans varied according to the amount of the loan. For no-document home loans between $650,000 and $1,500,000, Aurora set the following general conditions, among others:

i. The loan-to-value ratio ("LTV") could not exceed 60%. That meant that the amount of the loan could not exceed 60% of the value of the home. Aurora calculated the value of the home as the lesser of the home's purchase price or appraised value;

ii. Two independent appraisals of the home, completed by state-certified appraisers, had to be included in the loan application package; and

iii. The borrower had to have superior credit and live in the home as the borrower's primary residence.

e. Aurora, on behalf of Lehman, also offered limited-document home loans up to $4,000,000. Home buyers applying for limited-document home loans generally had to disclose their income, employment, and assets, but not their tax returns. Aurora's requirements for limited-document home loans varied according to the amount of the loan. For limited-document home loans between $1,500,000 and $4,000,000, Aurora set the following general conditions, among others:

i. The LTV could not exceed 65%;

ii. Two independent appraisals of the home, completed by state-certified appraisers, had to be included in the loan application package; and

iii. The borrower had to have superior credit.

B. <u>GreenPoint Bank</u>

3. During the times relevant to this Indictment:

a. The accounts and deposits of GreenPoint Bank were insured by the Federal Deposit Insurance Corporation.

b. GreenPoint Bank made loans to home buyers. GreenPoint Bank's lending agent was GreenPoint Mortgage Funding, Inc. ("GreenPoint Mortgage"). GreenPoint Mortgage established criteria to be applied for GreenPoint Bank to fund home loans, and approved or rejected home loan applications.

c. GreenPoint Mortgage received loan application packages from mortgage brokers and mortgage bankers, among other sources. Mortgage brokers and mortgage bankers gathered information from prospective borrowers and sent loan application packages to GreenPoint Mortgage for review. After GreenPoint

Mortgage approved the loan applications, GreenPoint Bank funded the loans and paid commissions to the mortgage brokers and mortgage bankers.

d. GreenPoint Mortgage offered limited-document home loans up to $1,000,000. Home buyers applying for limited-document home loans generally had to disclose their income, employment, and assets, but not their tax returns. GreenPoint Mortgage's requirements for limited-document home loans varied according to the amount of the loan. For limited-document home loans between $650,000 and $1,000,000, the LTV could not exceed 65%, although GreenPoint Mortgage could grant exceptions on a case-by-case basis. GreenPoint Mortgage calculated the value of the home as the lesser of the home's purchase price or appraised value.

e. GreenPoint Mortgage also offered second mortgage home loans up to $100,000, in the form of home equity lines of credit ("HELOCs"). GreenPoint Mortgage offered HELOCs in conjunction with limited-document first home loans. A home buyer applying for a HELOC over $100,000 had to seek and obtain an exception from GreenPoint Mortgage. On HELOCs funded in conjunction with limited-document first home loans between $650,000 and $1,000,000, the combined loan-to-value ratio ("CLTV") could not exceed 75%, although GreenPoint Mortgage could grant exceptions on a case-by-case basis. That meant that the combined amounts of the first home loan and the HELOC could not exceed 75% of the value of the home, calculated as the lesser of the home's purchase price or appraised value.

f. For loans with a CLTV over 75% on homes valued between $650,000 and $1,000,000, GreenPoint Mortgage required one appraisal completed by a state-licensed appraiser. GreenPoint Mortgage also required one field review of the initial appraisal, completed by a different appraiser.

g. GreenPoint Mortgage did not offer 100% financing to home buyers. That meant that GreenPoint Mortgage offered no loan product or combination of loan products by which a home buyer could borrow 100% of the value of the home. GreenPoint Mortgage made no exceptions to this rule.

III. <u>THE MULTIPLE LISTING SERVICE</u>

4. During the times relevant to this Indictment:

a. The Combined Los Angeles/Westside Multiple Listing Service, Inc. ("the MLS") was a non-profit company owned and operated by professional associations of real estate agents in Los Angeles, Beverly Hills, Malibu, and other Southern California communities. The MLS' operating budget came from dues paid by its members. Members of the MLS included licensed real estate agents, licensed real estate appraisers, and others in the real estate profession.

b. The main service provided by the MLS was an on-line electronic database of listings of homes for sale. Real estate agents representing home sellers ("sellers' agents") used the MLS database to advertise their listings and provide information about the homes. Real estate agents representing home buyers ("buyers' agents") used the MLS database to search for homes for their clients. Real estate appraisers used the

MLS database to, among other things, search for properties comparable in size, price, location, and other features, to the subject homes being appraised.

c. The MLS made changes to sellers' agents' listings in the MLS database upon the sellers' agents' request. Additionally, real estate agents gained access to and used the MLS database from computer terminals at the agents' own offices. This access enabled sellers' agents to make changes to their listings in the MLS database, and buyers' agents to search the MLS database for listings. The MLS permitted real estate agencies to delegate to the agencies' staff the task of electronically entering and changing listing data in the MLS database. However, MLS policy held sellers' agents, not their agencies' staff, responsible at all times for the accuracy and timeliness of their listings in the MLS database. The MLS enforced this policy through random audits of listings, assessments and fines imposed on sellers' agents, and compliance classes, among other means.

d. The MLS database provided the following information, among other information, about homes for sale:

i. The list price, which was the price sought by the seller of the home;

ii. Any changes to the list price;

iii. The date of the listing;

iv. The names of the seller's agents;

v. The number of days that the home was on the market;

vi. Whether the listing had been withdrawn from the MLS database;

vii. Whether a home was put back on the market for sale;

viii. Whether the seller had accepted an offer to purchase the home. Sellers' agents used the term "pending" to show that the seller had accepted an offer; and

ix. Whether the home was sold, and if so, when and for what price.

IV. THE DEFENDANTS AND THEIR CO-CONSPIRATORS

A. The Real Estate Agents: Defendants JOSEPH ARAM BABAJIAN and KYLE JOHN GRASSO

5. Defendants JOSEPH ARAM BABAJIAN and KYLE JOHN GRASSO are, and during the times relevant to this Indictment were, real estate agents licensed by the State of California, Department of Real Estate. From no later than 2000 through the date of this Indictment, defendants BABAJIAN and GRASSO worked together representing sellers and buyers of homes in exclusive Southern California communities, including Beverly Hills, Bel Air, Holmby Hills, and the Westside of Los Angeles. When their clients sell and buy homes, defendants BABAJIAN and GRASSO receive commissions, generally calculated at about 3% to 6% of the sale prices of the homes.

6. During the times relevant to this Indictment, defendants BABAJIAN and GRASSO were the sole owners of FSC Ventures, Inc. ("FSC Ventures"), a California corporation incorporated on or about December 15, 2000. Defendant BABAJIAN owned 70%, and defendant GRASSO owned 30%, of FSC Ventures.

Defendant BABAJIAN was the President and Chief Executive Officer. Defendant GRASSO was the Secretary, Treasurer, and Chief Financial Officer.

7. From no later than 2000 through about January 2001, defendants BABAJIAN and GRASSO worked together as independent contractors with Fred Sands Realtors ("Fred Sands"), a major real estate agency in the Los Angeles area. Defendants BABAJIAN and GRASSO worked at the Fred Sands Beverly Hills branch office. Defendants BABAJIAN and GRASSO, working together, were Fred Sands's top-producing real estate agents, measured by the commissions they generated and the aggregate prices of the homes their clients sold and bought.

8. Fred Sands had a business affiliation with Progressive Title Company ("Progressive Title"). In home purchases, Progressive Title sold title insurance policies protecting lenders against covered losses arising from undisclosed, earlier-recorded ("senior") liens and mortgages on the homes. Progressive Title also sold title insurance policies protecting home buyers against covered losses arising from defects in or unmarketability of the title conveyed to them.

9. In about January 2001, defendants BABAJIAN and GRASSO left Fred Sands and became independent contractors with Prudential California Realty ("Prudential"), a major real estate agency in Southern California. Prudential was a member of The Prudential Real Estate Affiliates, Inc. ("PREA"), a nationwide network of real estate agencies. Defendants BABAJIAN and GRASSO joined Prudential's Beverly Hills branch office.

10. In 2001, the principals of Prudential owned Pickford Holdings, LLC ("Pickford Holdings"), which in turn held an ownership interest in California Title Company ("Cal Title"). In home purchases, Cal Title sold the same kinds of title insurance policies for lenders and buyers that Progressive Title sold.

11. In return for defendants BABAJIAN and GRASSO joining Prudential, Prudential gave defendants BABAJIAN and GRASSO, through FSC Ventures, the following forms of compensation, among others:

a. A limited partnership interest in:

i. All but two Prudential branch offices in Los Angeles County; and

ii. All Prudential branch offices in Santa Barbara, Montecito, and Santa Ynez, California;

b. An 85% share of all commissions up to $2,000,000 generated annually by defendants BABAJIAN and GRASSO, and a 94% share of all commissions over $2,000,000 generated annually by them; and

c. An ownership interest in Pickford Holdings, plus an option to acquire an additional ownership interest in Pickford Holdings. Through these ownership interests, defendants BABAJIAN and GRASSO acquired an indirect ownership interest in Cal Title.

12. In 2001, defendants BABAJIAN and GRASSO, working together, were among Prudential's top-producing real estate agents, measured by the commissions they generated. In 2002,

defendants BABAJIAN and GRASSO, working together, were PREA's top-producing real estate agents nationwide. In 2003, defendants BABAJIAN and GRASSO, working together, were Prudential's second-highest producing real estate agents.

13. Beginning around the time that defendants BABAJIAN and GRASSO joined Prudential, and continuing through all other times relevant to this Indictment, defendants BABAJIAN and GRASSO collected their real estate agents' commissions through FSC Ventures. Escrow companies handling transactions in which clients of defendants BABAJIAN and GRASSO bought and sold homes typically made defendant BABAJIAN's and defendant GRASSO's commission checks payable to FSC Ventures. Defendant BABAJIAN generally collected 70%, and defendant GRASSO generally collected 30%, of these commissions.

14. In about February 2002, the principals of Prudential sold Prudential and Pickford Holdings to Home Services of California, Inc. ("Home Services"). Beginning in June 2002, in order to buy out FSC Ventures' ownership interests in Prudential and Pickford Holdings and accomplish the sale of those entities to Home Services, Prudential paid $3,500,000 to defendant BABAJIAN and $1,500,000 to defendant GRASSO.

B. <u>The Appraisers: Defendants LILA RIZK and L. SCOTT ROBINSON</u>

15. During the times relevant to this Indictment, defendants LILA RIZK and L. SCOTT ROBINSON were real estate appraisers based in Orange County, California. Defendants RIZK and ROBINSON were licensed by the State of California, Office of Real Estate Appraisers. To obtain and maintain their licenses,

defendants RIZK and ROBINSON each had to pass an examination and meet certain educational, training, and experience requirements established by California law and by the Appraiser Qualifications Board of the Appraisal Foundation.

16. Defendant RIZK had a Certified Residential License, which permitted her to appraise all residential properties from one to four units, including single-family homes of any value. Defendant ROBINSON, however, had only a Residential License, which permitted him to appraise only non-complex residential properties from one to four units, up to a transaction value of $1,000,000. For properties with transaction values higher than $1,000,000, defendant ROBINSON was required to work with or obtain the concurrence of an appraiser with a Certified Residential License.

C. The Mortgage Brokers, Their Employees, And Their In-House Escrow Officer

17. In about 1995, co-conspirator Mark Alan Abrams and others started Desert Pacific Financial, Inc. ("DPF"), a mortgage brokering company in Palm Desert, California. Abrams was President of DPF. Abrams moved DPF to Irvine in about 1996 or 1997, and then to Beverly Hills by no later than about February or March 2000. DPF sent loan application packages to lenders for review and funding. DPF did not itself fund loans, but received commissions from lenders when loans closed.

18. In the 1990s, co-conspirator Charles Elliott Fitzgerald was a residential real estate developer in Southern California. In the late 1990s, defendant BABAJIAN introduced Fitzgerald to Abrams. In late 1999 or early 2000, Fitzgerald became Abrams'

business partner in DPF. Together, Fitzgerald and Abrams expanded into residential real estate development and also continued to send loan application packages to lenders. In or about late 2001, Fitzgerald and Abrams began operating their mortgage brokering company under the name Beverly Hills Estates Funding, Inc. ("BHEF").

19. Over time, Fitzgerald and Abrams separately or together came to control various trusts, partnerships, and corporations (the "DPF/BHEF-related entities"). One of the main DPF/BHEF-related entities controlled by Fitzgerald and Abrams was PTD Partners, LLC ("PTD Partners"). Fitzgerald was the manager of PTD Partners. The other members of PTD Partners were the CTR Irrevocable Trust and the DPF Irrevocable Trust. Fitzgerald controlled the CTR Irrevocable Trust. Abrams controlled the DPF Irrevocable Trust.

20. From no later than 2000 through at least June 2003, co-conspirators Nicole LaViolette and Jamieson Todd Matykowski worked at DPF/BHEF. LaViolette was a loan processor who assisted borrowers in gathering documents and completing forms, sent loan application packages to lenders on behalf of borrowers, and responded to lenders' requests for additional information about proposed home loans. Matykowski's responsibilities included scouting homes and negotiating with sellers' agents on behalf of Fitzgerald and Abrams to buy homes. LaViolette and Matykowski reported to Fitzgerald and Abrams.

21. By early 2000, Fitzgerald and Abrams opened Platinum Escrow, a DPF/BHEF in-house escrow company in

Beverly Hills. Fitzgerald and Abrams later opened additional DPF/BHEF in-house escrow companies, including Estates Escrow and Star Escrow in Beverly Hills. From no later than 2000 through at least June 2003, co-conspirator Timothy Holland, who had been working for Fitzgerald and Abrams as a loan processor, was the in-house escrow officer for Platinum Escrow, Estates Escrow, Star Escrow, and the other DPF/BHEF in-house escrow companies controlled by Fitzgerald and Abrams. Holland reported to Fitzgerald and Abrams.

D. <u>The Mortgage Banker</u>

22. From 1999 through at least November 2000, ACF Partners was a California general partnership that did business as Americorp Funding ("Americorp"), a mortgage banking company with offices on the Westside of Los Angeles and in Pasadena, California. Americorp originated, brokered, funded, and sold home loans. Co-conspirator Richard A. Maize was a co-founder of and original partner in Americorp.

23. From no later than about July 2000 through at least January 2001, Americorp was a correspondent and mortgage broker that sent loan application packages to Aurora, GreenPoint Mortgage, and other lenders for review. In its capacity as a correspondent, Americorp funded loans after other lenders approved and committed to buy them, and then sold the loans to those lenders. In its capacity as a mortgage broker, Americorp sent loan application packages to lenders for review and funding, and received commissions from lenders when loans closed.

24. In about December 2000 and January 2001, Maize and his partners sold Americorp to Prism Mortgage Company ("Prism"). Prism made Americorp a new division of a Prism subsidiary. Maize became the President of the new Americorp division of the Prism subsidiary. Prism continued to operate Americorp as a mortgage banking company. Even after Prism bought Americorp, Americorp remained a correspondent for Aurora and continued to send loan application packages to Aurora for review. After Aurora approved the loans and committed to buy them, Prism initially funded the loans and then sold them to Aurora.

V. <u>OVERVIEW OF THE CRIMINAL CONDUCT</u>

25. Beginning in about July 2000, and continuing through at least January 2003, defendants BABAJIAN, GRASSO, RIZK, and ROBINSON, working with co-conspirators Fitzgerald, Abrams, Maize, LaViolette, Matykowski, Holland, and others, perpetrated a sophisticated and far-reaching scheme to cheat federally-insured lenders into unwittingly funding tens of millions of dollars in fraudulently inflated loans on high-end homes in exclusive California communities. By supplying false documentation, including bogus purchase contracts and appraisals, the defendants and their co-conspirators deceived the victim lenders into believing that the loans were adequately secured by the homes' market values, when in fact the loans were greater than the homes' true purchase prices and true market values. As described further below, as part of this course of criminal conduct:

a. Defendants GRASSO, RIZK, and ROBINSON, Fitzgerald, Abrams, Maize, LaViolette, and other conspirators targeted

Aurora's and GreenPoint Mortgage's loan products in order to submit fraudulently inflated loan application packages.

b. Defendants BABAJIAN and GRASSO, Fitzgerald, Abrams, and Matykowski found homes for sale in exclusive neighborhoods that defendant GRASSO, Fitzgerald, and Abrams could purchase by obtaining inflated loans.

c. Defendants BABAJIAN and GRASSO, as buyers' agents representing Fitzgerald, Abrams, and defendant GRASSO himself, made offers on behalf of Fitzgerald, Abrams, and defendant GRASSO to buy homes from the original sellers at their true market values. Matykowski also made such offers on behalf of Fitzgerald and Abrams.

d. Defendants BABAJIAN and GRASSO, as buyers' agents representing Fitzgerald and Abrams, negotiated purchase contracts that required the original sellers and their agents to keep the true purchase prices of the homes confidential -- including by hiding and concealing information about the purchases in the MLS database -- so that the victim lenders would not learn that the conspirators were buying the homes for prices far less than the prices reported in the loan application packages. Matykowski also negotiated such purchase contracts on behalf of Fitzgerald and Abrams.

e. Defendant GRASSO, Fitzgerald, Abrams, LaViolette, and other conspirators fabricated inflated purchase contracts for the homes at prices far higher than the homes' true purchase prices. On homes bought by Fitzgerald and Abrams, the inflated purchase contracts were in the names of Fitzgerald and straw borrowers. On defendant GRASSO's home, the inflated purchase contract was in defendant GRASSO's name.

f. Defendants RIZK and ROBINSON inflated appraisals of the homes so that the homes would appear to be worth far more than their true values. Defendant ROBINSON misappropriated the name of an appraiser with a Certified Residential License on defendant ROBINSON's appraisals.

g. In order to make the inflated appraisals appear legitimate to the victim lenders, defendants BABAJIAN and GRASSO provided defendants RIZK and ROBINSON with information on homes that supposedly were comparable to the subject homes being appraised, but which in fact had sold or were listed for millions of dollars more than the true purchase prices of those subject homes.

h. Defendants BABAJIAN, GRASSO, RIZK, and ROBINSON, Fitzgerald, Abrams, Maize, LaViolette, and other conspirators sent, caused to be sent, and aided and abetted the sending of false and fraudulent loan application packages to the victim lenders, including the inflated purchase contracts and the inflated appraisals. The loan application packages falsely made it appear to the victim lenders that defendant GRASSO, Fitzgerald, and the straw borrowers were buying the homes at prices far higher than their true purchase prices. This in turn falsely made it appear that the LTVs and CLTVs would not exceed the victim lenders' maximum ratios. In reality, defendant GRASSO, Fitzgerald, and Abrams were buying the homes at their true market values, such that the LTVs and CLTVs would exceed those ratios.

i. Defendants BABAJIAN and GRASSO, Fitzgerald, Abrams, Maize, LaViolette, Holland, and other conspirators used the DPF/BHEF in-house escrow companies in the transactions in which they obtained inflated loans, so that the victim lenders would not learn that the conspirators were buying the homes for prices far less than the prices reported in the loan application packages.

j. On at least one home where defendants BABAJIAN and GRASSO also represented the original seller as seller's agents, and thereby controlled the listing of the home in the MLS database, defendants BABAJIAN and GRASSO manipulated, fabricated, and falsified the MLS database information about the home, including by inflating the purchase price and falsifying the description of the home.

k. Defendants BABAJIAN and GRASSO exploited Fred Sands's business affiliation with Progressive Title, and Prudential's business affiliation with Cal Title, to help obtain title insurance policies up to the full amounts of the inflated loans. The victim lenders would not fund or buy the loans without such title insurance policies. Defendants BABAJIAN and GRASSO, using their connections to Cal Title, demanded and received from Abrams and Fitzgerald concealed, outside-of-escrow payments in transactions funded by inflated loans insured by Cal Title, even where defendants BABAJIAN and GRASSO represented neither seller nor buyer, had no role in the transactions, and were entitled to no money from them.

26. Relying on the false documentation in the loan application packages, including the inflated purchase contracts and the inflated appraisals, the victim lenders funded and bought loans on the inflated purchases. Because the packages contained false and fraudulent information, the victim lenders did not know that the loans were actually greater than the true purchase prices of the homes.

27. The conspirators profited from the inflated loans in the following ways, among others:

a. Fitzgerald and Abrams got millions of dollars and control of most of the homes;

b. Defendant GRASSO got a Beverly Hills home without putting any of his own money down;

c. Defendants BABAJIAN and GRASSO got hundreds of thousands of dollars in real estate agents' commissions and concealed, outside-of-escrow payments on homes bought by Fitzgerald and Abrams;

d. Defendants RIZK and ROBINSON got hundreds of thousands of dollars in inflated appraisal fees;

e. Maize got hundreds of thousands of dollars in kickbacks; and

f. LaViolette, Matykowski, and Holland got salaries, bonuses, commissions, and other benefits.