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**ATTORNEY FOR PLAINTIFF**  
**UNITED STATES OF AMERICA**

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

<b>UNITED STATES OF AMERICA,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>SCOTT WILLIAM HILGERS,</b>  <b>Defendant.</b>	<b>CR 07-12-H-CCL</b>    <b><u>OFFER OF PROOF</u></b>
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Scott William Hilgers 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 Scott William Hilgers 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 Scott William Hilgers 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 Scott William Hilgers acted with intent to defraud; and

**Fifth**, that Scott William Hilgers 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 Scott Hilgers was introduced by a local realtor to T.R. Beginning in October of 2004, Hilgers assisted T.R. in obtaining 100% financing on four residential properties in the Helena, Montana area.

Hilgers worked for a company called TriWest Mortgage. As a mortgage broker, Hilgers is 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, Hilgers brokered mortgages for T.R.’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. T.R. did not have sufficient income to justify the mortgage exposure caused by any one of these mortgages, much less all of them. Hilgers and T.R. then agreed to have T.R. concoct fictitious income documentation for the mortgage file. Using his computer, Hilgers generated counterfeit W-2 forms and wage statements that indicated that T.R. was employed by either Davron Telco (2002-2003) or Northwest Wireless (2004-2005). The two reported to the mortgage file that T.R. was employed by Davron in 2002 and had made \$51,975, when in truth, T.R. had not worked for Davron. False documents attached to the file indicated that T.R. had made \$54,926 from employment with Davron in 2003, when in truth, T.R. had not worked for Davron and had a reported gross income of only \$28,515 in 2003. The paperwork indicated that in 2004, T.R. earned \$67,815 from Northwest Wireless, when in truth, T.R. had not worked for Northwest Wireless in 2004 and had a reported gross income of only \$19,170 for that year. Finally, Hilgers and T.R. put documentation – a purported wage and earnings statement – into the mortgage files that T.R. had been paid by Northwestern Wireless \$48,489 as of August 31, 2005, when in truth T.R. 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, T.R. represented on 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, T.R. 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 T.R. 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 (and there was no suggestion that in those transactions T.R. utilized a corrupted broker).

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 created by Hilgers and T.R., 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 Hilgers 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), Hilgers

and T.R. would have defrauded the secondary mortgage companies in an amount of \$70,139.

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

DATED this 30th day of July, 2007.

WILLIAM W. MERCER  
United States Attorney

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