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NOV 1 2011

CLERK US DISTRICT COURT
DISTRICT OF NEVADA

BY: _____ DEPUTY

1 DENIS J. McINERNEY
Chief

2 CHARLES LA BELLA
Deputy Chief

3 MICHAEL BRESNICK
Assistant Chief

4 NICOLE SPRINZEN
MARY ANN MCCARTHY
Trial Attorneys

5 Fraud Section, Criminal Division
U.S. Department of Justice
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AMENDED

8

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 -oOo-

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DEBORAH GENATO,

16 Defendant.

CASE NO. 11-CR-339-LDG-GWF

PLEA MEMORANDUM

17

18 The United States of America, by and through Denis J. McInerney, Chief, U.S.

19 Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief,

20 Michael J. Bresnick, Assistant Chief, and Nicole Sprinzen and Mary Ann McCarthy, Trial

21 Attorneys, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant,

22 DEBORAH GENATO, and the defendant's attorney, Mace Yampolsky, submit this plea

23 memorandum.

24 I. PLEA AGREEMENT

25 The United States and the defendant have reached the following plea agreement, which is

26 not binding on the court:

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A. The Plea

1. Defendant will plead guilty to Count One of the information, charging Defendant with conspiracy to commit wire and mail fraud, in violation of Title 18, United States Code, Section 1349. Defendant also agrees to pay restitution and to the forfeiture of the property set forth in this Plea Memorandum.

B. Additional Charges

2. The U.S. Department of Justice, Criminal Division, Fraud Section agrees to bring no additional criminal charges in the District of Nevada against the defendant relating to or arising from the offenses charged in the information, except for any crime of violence and any crime unknown to the Fraud Section before the time the parties sign this Plea Memorandum.

C. Sentencing Guideline Calculations

3. Defendant understands that the Court is required to consider United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining the defendant's sentence. Defendant understands that the Sentencing Guidelines are advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise its discretion to impose any reasonable sentence up to the maximum set by statute for the crime of conviction.

4. The parties agree that the following calculations of the United States Sentencing Guidelines (2010) apply:

Base Offense Level (U.S.S.G. §2B1.1(a)):	7
Loss Amount of \$10,000 to \$30,000 (U.S.S.G. §2B1.1(b)(1)(C)):	4
Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(C)):	2
TOTAL	13

1 5. Pursuant to U.S.S.G. §3E1.1(a), the United States will recommend that the
2 defendant receive a two (2) level adjustment for acceptance of responsibility unless Defendant (a)
3 fails to make a complete-factual basis for the guilty plea at the time it is entered; (b) is untruthful
4 with the Court or probation officers in any respect, including without limitation, financial
5 information; (c) denies involvement in the offense or provides conflicting statements regarding
6 defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct;
7 (f) fails to appear in court; or (g) violates the conditions of defendant's pretrial release conditions.

8 6. Pursuant to U.S.S.G. §3E1.1(b), the United States will, in its sole discretion, make
9 a motion for an additional one-level adjustment for acceptance of responsibility prior to sentencing
10 if the defendant timely notifies the United States of the defendant's intention to plead guilty,
11 thereby permitting the United States to avoid preparing for trial and allowing for the efficient
12 allocation of resources.

13 7. Defendant's Criminal History Category will be determined by the court.

14 **D. Other Sentencing Matters**

15 8. The parties agree that the Sentencing Guideline calculations are based on
16 information now known and could change upon investigation by the United States Probation
17 Office. It is possible that factors unknown or unforeseen by the parties to the Plea may be
18 considered in determining the offense level, specific offense characteristics, and other related
19 factors. In that event, the defendant will not withdraw her plea of guilty. Both the defendant and
20 the United States are free to: (a) supplement the facts by supplying relevant information to the
21 United States Probation Office and the Court, and (b) correct any and all factual inaccuracies
22 relating to the calculation of the sentence.

23 9. The stipulations in this Memorandum do not bind either the United States
24 Probation Office or the Court. Both Defendant and the United States are free to: (a) supplement
25 the facts by supplying relevant information to the United States Probation Office and the Court,
26 and (b) correct any and all factual inaccuracies relating to the calculation of the sentence.

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1 **E. Fines and Special Assessment**

2 10. Defendant agrees that the Court may impose a fine due and payable immediately
3 upon sentencing.

4 11. Defendant will pay the special assessment of \$100 per count of conviction at the
5 time of sentencing.

6 **F. Restitution**

7 12. Defendant agrees to make restitution to the HOA communities with whom she
8 contracted as a property manager in furtherance of this scheme, described below in Section IV.
9 Defendant understands and agrees that this amount could be as much as \$30,000 USD. Defendant
10 understands that any restitution imposed by the Court may not be discharged in whole or in part in
11 any present or future bankruptcy proceeding.

12 **G. Forfeiture**

13 13. In consideration for the government agreeing to the terms of this Plea, Defendant
14 knowingly and voluntarily agrees to the abandonment, the civil administrative forfeiture, the civil
15 judicial forfeiture, or the criminal forfeiture money judgment of \$30,000 in United States Currency
16 ("property"), in addition to any order of restitution even though the amount of restitution may
17 differ from the amount of forfeiture. Defendant agrees that Defendant will ask the Court to impose
18 an order of forfeiture in the amount stated above and will not ask the Court to adjust the amount in
19 any respect and will sign a consent order of forfeiture to this effect. Defendant admits that if the
20 case were to proceed to trial, the government could prove forfeiture in excess of the amount stated
21 here.

22 14. Defendant knowingly and voluntarily agrees to abandon or to forfeit the property
23 to the United States.

24 15. Defendant knowingly and voluntarily agrees to relinquish all right, title, and
25 interest in the property.

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1 16. Defendant knowingly and voluntarily agrees to waive her right to any
2 abandonment proceedings, any civil administrative forfeiture proceedings, any civil judicial
3 forfeiture proceedings, or any criminal forfeiture proceedings ("proceedings") of the property.

4 17. Defendant knowingly and voluntarily agrees to waive service of process of any
5 and all documents filed in this action or any proceedings concerning the property arising from the
6 facts and circumstances of this case.

7 18. Defendant knowingly and voluntarily agrees to waive any further notice to the
8 Defendant, Defendant's agents, or Defendant's attorney regarding the abandonment or the
9 forfeiture and disposition of the property.

10 19. Defendant knowingly and voluntarily agrees not to file any claim, answer,
11 petition, or other documents in any proceedings concerning the property.

12 20. Defendant knowingly and voluntarily agrees to waive the statute of limitations,
13 the CAFRA requirements, Fed. R. Crim. P. 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional
14 due process requirements of any abandonment proceeding or any forfeiture proceeding concerning
15 the property.

16 21. Defendant knowingly and voluntarily agrees to waive Defendant's right to a jury
17 trial on the forfeiture of the property.

18 22. Defendant knowingly and voluntarily agrees to waive (a) all constitutional, legal,
19 and equitable defenses to, (b) any constitutional or statutory double jeopardy defense or claim
20 concerning, and (c) any claim or defense under the Eighth Amendment to the United States
21 Constitution, including, but not limited to, any claim or defense of excessive fine in any
22 proceedings concerning the property.

23 23. Defendant knowingly and voluntarily agrees to the entry of an Order of Forfeiture
24 of the property to the United States.

25 24. Defendant knowingly and voluntarily agrees and understands the abandonment,
26 the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the
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1 property shall not be treated as satisfaction of any assessment, fine, restitution, cost of
2 imprisonment, or any other penalty this Court may impose upon the Defendant in addition to the
3 abandonment or the forfeiture.

4 **H. Waiver of Appeal**

5 25. In exchange for the concessions made by the United States in this Plea
6 Memorandum, Defendant knowingly and expressly waives the right to appeal any sentence that is
7 imposed within the applicable Sentencing Guideline range as calculated by the Court, further
8 waives the right to appeal the manner in which that sentence was determined on the grounds set
9 forth in Title 18, United States Code, Section 3742, and further waives the right to appeal any other
10 aspect of the conviction or sentence, including any order of restitution and forfeiture. Defendant
11 reserves only the right to appeal any portion of the sentence that is an upward departure from the
12 applicable Sentencing Guideline range calculated by the Court.

13 26. Defendant also waives all collateral challenges, including any claims under 28
14 U.S.C. § 2255, to the Defendant's conviction, sentence and the procedure by which the Court
15 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of
16 counsel.

17 **L. Additional Promises, Agreements, and Conditions**

18 27. In exchange for the United States entering into this agreement, Defendant agrees
19 that (a) the facts set forth in Section IV of this Plea Memorandum shall be admissible against the
20 Defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (i) for any purpose at
21 sentencing; and (ii) in any subsequent proceeding, including a trial in the event the Defendant does
22 not plead guilty or withdraws the Defendant's guilty plea, to impeach or rebut any evidence,
23 argument or representation offered by or on the Defendant's behalf; and (b) the Defendant
24 expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with
25 regard to the facts set forth in Section IV of the Plea Memorandum to the extent set forth above.

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1 28. The parties agree that no promises, agreements, and conditions have been entered
2 into other than those set forth in this Plea Memorandum, and will not be entered into unless in
3 writing and signed by all parties.

4 **J. Limitations**

5 29. This Plea is limited to the Criminal Division of the United States Department of
6 Justice and cannot bind any other federal, state or local prosecuting, administrative, or regulatory
7 authority. But, this Plea Memorandum does not prohibit the United States through any agency
8 thereof, the Criminal Division of the United States Department of Justice, or any third party from
9 initiating or prosecuting any civil proceeding directly or indirectly involving the Defendant,
10 including but not limited to, proceedings under the False Claims Act relating to potential civil
11 monetary liability or by the Internal Revenue Service relating to potential tax liability.

12 **K. Cooperation**

13 30. Defendant agrees, if requested by the United States, to provide complete and
14 truthful information and testimony concerning Defendant's knowledge of all other persons who are
15 committing or have committed offenses against the United States or any state, and agrees to
16 cooperate fully with the United States in the investigation and prosecution of such persons.

17 31. In the event the government decides in its sole discretion that the assistance
18 provided by Defendant amounts to "substantial assistance" pursuant to U.S.S.G. § 5K1.1, the
19 United States will timely file a motion for downward departure from the applicable Sentencing
20 Guideline calculation. The Court has the sole discretion to grant such a motion.

21 32. Defendant agrees that a motion for downward departure based on substantial
22 assistance shall not be made under any circumstances unless Defendant's cooperation is deemed to
23 be substantial assistance by the government. The United States has made no promise, implied or
24 otherwise, that Defendant will be granted a departure for substantial assistance. Further, no
25 promise has been made that such a motion will be made even if Defendant complies with the terms

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1 of this Plea in all respects but has been unable to provide substantial assistance as determined in
2 the sole discretion of the government.

3 33. The United States agrees to consider the totality of the circumstances, including
4 but not limited to, the following factors, in determining whether, in the sole discretion of the
5 government, Defendant has provided substantial assistance which would merit a motion by the
6 United States for a downward departure from the applicable Guideline:

7 a. The United States' evaluation of the significance and usefulness of Defendant's
8 assistance;

9 b. The truthfulness, completeness, and reliability of any information or testimony
10 provided by Defendant;

11 c. The nature and extent of Defendant's assistance;

12 d. The truthfulness and completeness in disclosing and bringing to the attention of
13 the Government all crimes which Defendant has committed and all administrative, civil, or
14 criminal proceedings, investigations, and prosecutions in which he has been or is a subject, target,
15 party, or witness;

16 e. The truthfulness and completeness in disclosing and providing to the Government,
17 upon request, any document, record, or other evidence relating to matters about which the
18 Government or any designated law enforcement agency inquires, including but not limited to,
19 Defendant's personal finances;

20 f. Any injury suffered, or any danger or risk of injury to Defendant or Defendant's
21 family resulting from Defendant's assistance; and,

22 g. The timeliness of Defendant's assistance.

23 34. Defendant agrees that in the event the United States files a downward departure
24 motion based upon Defendant's substantial assistance, the United States reserves the right to make
25 a specific recommendation to the Court regarding the extent of such a departure. Defendant
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1 understands and agrees that the final decision as to how much of a departure, if any, is warranted
2 rests solely with the Court.

3 **L. Breach**

4 35. Defendant agrees that if Defendant, at any time after the signature of this
5 agreement and execution of all required certifications by Defendant, Defendant's counsel, and for
6 the government, knowingly violates or fails to perform any of Defendant's obligations under this
7 Plea Memorandum ("a breach"), the government may declare this Plea Memorandum breached.
8 All of Defendant's obligations are material, a single breach of this is sufficient for the government
9 to declare a breach, and Defendant shall not be deemed to have cured a breach without the express
10 agreement of the government in writing. If the government declares this Memorandum breached,
11 and the Court finds such a breach to have occurred, then: (a) if Defendant has previously entered a
12 guilty plea pursuant to this Memorandum, Defendant will not be able to withdraw the guilty plea,
13 and (b) the government will be relieved of all its obligations under this Memorandum.

14 **II. PENALTY**

15 36. The maximum penalty for a violation of Title 18, United States Code, Section
16 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant is
17 also subject to supervised release for a term of not greater than five (5) years.

18 37. Supervised release is a period of time following imprisonment during which
19 Defendant will be subject to various restrictions and requirements. Defendant understands that if
20 Defendant violates one or more of the conditions of any supervised release imposed, Defendant
21 may be returned to prison for all or part of the term of supervised release, which could result in
22 Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

23 38. Defendant is required to pay for the costs of imprisonment, probation, and
24 supervised release, unless the Defendant establishes that the Defendant does not have the ability to
25 pay such costs, in which case the court may impose an alternative sanction such as community
26 service.

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III. ELEMENTS

39. The essential elements of the offense of conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1349, are as follows:

a. First, from at least as early as in or about February 2007 through at least in or about February 2009, there was an agreement between two or more persons to commit wire and mail fraud;

b. Second, the Defendant was a party to or member of that agreement; and,

c. Third, Defendant joined the agreement or conspiracy knowing of at least one of its objects and intending to help accomplish it.

IV. FACTS

40. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

41. Defendant specifically admits and declares under penalty of perjury that all of the facts set forth below are true and correct:

42. From as early as in or about February 2007 through at least in or about February 2009, Defendant knowingly participated in a scheme to control various Homeowner Association (HOA) boards of directors so that the HOA boards would award the handling of construction defect lawsuits and remedial construction contracts to a law firm and construction company designated by Defendant's co-conspirators.

43. In order to accomplish this scheme, co-conspirators acted as straw purchasers of properties in numerous Nevada HOA communities. The co-conspirators managed and operated the payments associated with maintaining these straw properties by running a so-called "Bill Pay Program," pursuant to which the co-conspirators funded the properties through several limited liability companies and at the direction of a co-conspirator. Many of the payments on these straw properties were wired from California to Nevada. Co-conspirators also transferred an interest in some of the units to other co-conspirators to make it appear as if the co-conspirator was a bonafide homeowner.

1 44. The straw purchasers and those who acquired a transferred interest in a unit agreed
2 to run for election to the respective HOA boards. These co-conspirators were paid in cash, check,
3 or promised things of value for their participation, all of which resulted in a personal financial
4 benefit to the co-conspirators.

5 45. To ensure these co-conspirators would win the elections, Defendant and her co-
6 conspirators employed deceitful tactics, such as creating false phone surveys to gather information
7 about homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town
8 homeowners unlikely to participate in the elections, and submitting fake and forged ballots. Co-
9 conspirators also hired private investigators to find "dirt" on the bonafide candidates in order to
10 create smear campaigns. Defendant used her position as property manager at Vistana, Park Avenue,
11 and Chateau Nourveau by providing mailing lists, labels, and other voting materials to create fake
12 election ballots. She also allowed co-conspirators to gain access to the election ballots that had
13 been mailed into the property management company by the bonafide homeowners prior to the
14 election date.

15 46. Another tactic the co-conspirators used to rig certain HOA board elections was to
16 prepare forged ballots for out-of-town homeowners and either cause them to be transported or
17 mailed to California and thereafter to have the ballots mailed back to Las Vegas from various
18 locations around California so as to make it appear that the ballots were completed and mailed by
19 bonafide homeowners residing in other states.

20 47. Co-conspirators also attempted to create the appearance that the elections were
21 legitimate by hiring independent attorneys to run the HOA board elections. The homeowners were
22 led to believe that these "special election masters" were supposed to: (i) contact the bonafide
23 homeowners to inform them of the election; (ii) mail the bonafide homeowners election ballots and
24 voting instructions; (iii) collect and secure those election ballots returned by mail until the date of
25 the election; and, (iv) preside over the HOA board election, including supervising the counting of
26 ballots. However, they, too, were paid in cash, check, and promised things of value, by or on behalf
27 of Defendant's co-conspirators for their assistance in rigging the elections.

1 53. Defendant acknowledges that Defendant has been advised, and understands, that
2 by entering a plea of guilty the Defendant is waiving, that is, giving up, certain rights guaranteed to
3 the Defendant by law and by the Constitution of the United States. Specifically, Defendant is
4 giving up:

5 a. The right to proceed to trial by jury on the original charges, or to a trial by a judge if
6 Defendant and the United States both agree;

7 b. The right to confront the witnesses against the Defendant at such a trial, and to cross-
8 examine them;

9 c. The right to remain silent at such trial, with such silence not to be used against Defendant
10 in any way;

11 d. The right, should Defendant so choose, to testify in Defendant's own behalf at such a
12 trial;

13 e. The right to compel witnesses to appear at such a trial, and to testify in Defendant's
14 behalf; and,

15 f. The right to have the assistance of an attorney at all stages of such proceedings.

16 54. Defendant acknowledges that Defendant is, in all respects, satisfied by the
17 representation provided by Defendant's attorney and that Defendant's attorney has discussed with
18 Defendant the burdens and benefits of this agreement and the rights that Defendant has waived
19 herein.

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1 55. Defendant, Defendant's attorney, and the attorney for the United States
 2 acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by
 3 and between the parties, and that no other promise has been made or implied by either the
 4 Defendant, Defendant's attorney, or the attorney for the United States.

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AUGUST 9, 2011
 DATED

9/23/2011
 DATED

9/23/2011
 DATED

DENIS J. McINERNEY
 Chief
 United States Department of Justice,
 Criminal Division, Fraud Section

Charles LaBella
 CHARLES LA BELLA

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 Defendant

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