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8

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 -oOo-

12 UNITED STATES OF AMERICA,)
13 Plaintiff,) CASE NO. 2:11-cr-00338-PMP -GWF
14 v.) **PLEA MEMORANDUM**
15 ANGELA ESPARZA,)
16 Defendant.)
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, ANGELA
22 ESPARZA, and the defendant's attorney, Jonathan Powell, submit this Plea Memorandum.

23 **I. PLEA AGREEMENT**

24 The United States and the defendant have reached the following plea agreement, which is
25 not binding on the court:
26
27

1 **A. The Plea**

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

6 **B. Additional Charges**

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

11 **C. Sentencing Guideline Calculations**

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

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

20	Base Offense Level (U.S.S.G. §2B1.1(a):	7
21		
22	Loss Amount of \$200,000 to \$400,000 (U.S.S.G. §2B1.1(b)(1)(G):	12
23		
24	Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(C):	2
25		
26	TOTAL	21

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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 Memorandum
18 may be considered in determining the offense level, specific offense characteristics, and other
19 related factors. In that event, the defendant will not withdraw her plea of guilty. Both the
20 defendant and the United States are free to: (a) supplement the facts by supplying relevant
21 information to the United States Probation Office and the Court, and (b) correct any and all factual
22 inaccuracies relating to the calculation of the sentence.

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

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 lender that financed her straw
8 purchase in furtherance of the scheme, described below in Section IV. Defendant understands and
9 agrees that this amount could be as much as \$240,000, the purchase price for the property. The
10 parties further acknowledge, however, that this amount may be reduced at sentencing by any
11 provable down payments and mortgage payments made before February 2009. Defendant
12 understands that any restitution imposed by the Court may not be discharged in whole or in part in
13 any present or future bankruptcy proceeding.

14 **G. Forfeiture**

15 13. The parties agree that the government will not request that the Court require
16 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless
17 order that Defendant shall pay forfeiture, the government agrees that such amount shall be the total
18 property purchase price, reduced by any provable down payments and mortgage payments made
19 before February 2009. In the event of any order by the Court that Defendant shall pay forfeiture,
20 the Defendant knowingly and voluntarily agrees to the following:

- 21 a. to abandon or to forfeit the property to the United States;
- 22 b. to relinquish all right, title, and interest in the property;
- 23 c. to waive his right to any abandonment proceedings, any civil administrative
24 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
25 proceedings (“proceedings”) of the property;
- 26 d. to waive service of process of any and all documents filed in this action or any
27

1 proceedings concerning the property arising from the facts and circumstances of this case;

2 e. to waive any further notice to the defendant, the defendant's agents, or the
3 defendant's attorney regarding the abandonment or the forfeiture and disposition of the property;

4 f. not to file any claim, answer, petition, or other documents in any proceedings
5 concerning the property;

6 g. to waive the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.
7 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due process requirements of any
8 abandonment proceeding or any forfeiture proceeding concerning the property;

9 h. to waive the defendant's right to a jury trial on the forfeiture of the property;

10 i. to waive (a) all constitutional, legal, and equitable defenses to, (b) any
11 constitutional or statutory double jeopardy defense or claim concerning, and (c) any claim or
12 defense under the Eighth Amendment to the United States Constitution, including, but not limited
13 to, any claim or defense of excessive fine in any proceedings concerning the property; and

14 j. to the entry of an Order of Forfeiture of the property to the United States.

15 14. Defendant knowingly and voluntarily agrees and understands the abandonment,
16 the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the
17 property shall not be treated as satisfaction of any assessment, fine, restitution, cost of
18 imprisonment, or any other penalty this Court may impose upon the defendant in addition to the
19 abandonment or the forfeiture.

20 **H. Waiver of Appeal**

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

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

7 **I. Additional Promises, Agreements, and Conditions**

8 17. In exchange for the United States entering into this Plea Memorandum, Defendant
9 agrees that (a) the facts set forth in Section IV of this Plea Memorandum shall be admissible
10 against the Defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (i) for any
11 purpose at sentencing; and (ii) in any subsequent proceeding, including a trial in the event the
12 Defendant does not plead guilty or withdraws the defendant's guilty plea, to impeach or rebut any
13 evidence, argument or representation offered by or on the Defendant's behalf; and (b) the
14 Defendant expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid.
15 410 with regard to the facts set forth in Section IV of the Plea Memorandum to the extent set forth
16 above.

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

20 **J. Limitations**

21 19. This Plea Memorandum is limited to the Criminal Division of the United States
22 Department of Justice and cannot bind any other federal, state or local prosecuting, administrative,
23 or regulatory authority. But, this Plea Memorandum does not prohibit the United States through
24 any agency thereof, the Criminal Division of the United States Department of Justice, or any third
25 party from initiating or prosecuting any civil proceeding directly or indirectly involving the
26 Defendant, including but not limited to, proceedings under the False Claims Act relating to
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1 potential civil monetary liability or by the Internal Revenue Service relating to potential tax
2 liability.

3 **K. Cooperation**

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

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

12 22. Defendant agrees that a motion for downward departure based on substantial
13 assistance shall not be made under any circumstances unless Defendant's cooperation is deemed to
14 be substantial assistance by the government. The United States has made no promise, implied or
15 otherwise, that Defendant will be granted a departure for substantial assistance. Further, no
16 promise has been made that such a motion will be made even if Defendant complies with the terms
17 of this Plea Memorandum in all respects but has been unable to provide substantial assistance as
18 determined in the sole discretion of the government.

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

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

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

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- 1 c. The nature and extent of Defendant's assistance;
- 2 d. The truthfulness and completeness in disclosing and bringing to the attention of
3 the Government all crimes which Defendant has committed and all administrative, civil, or
4 criminal proceedings, investigations, and prosecutions in which he has been or is a subject, target,
5 party, or witness;
- 6 e. The truthfulness and completeness in disclosing and providing to the Government,
7 upon request, any document, record, or other evidence relating to matters about which the
8 Government or any designated law enforcement agency inquires, including but not limited to,
9 Defendant's personal finances;
- 10 f. Any injury suffered, or any danger or risk of injury to Defendant or Defendant's
11 family resulting from defendant's assistance; and,
- 12 g. The timeliness of Defendant's assistance.

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

18 **L. Breach**

19 25. Defendant agrees that if Defendant, at any time after the signature of this
20 Memorandum and execution of all required certifications by Defendant, Defendant's counsel, and
21 an attorney for the government, knowingly violates or fails to perform any of Defendant's
22 obligations under this Memorandum ("a breach"), the government may declare this Memorandum
23 breached. All of Defendant's obligations are material, a single breach of this Plea Memorandum is
24 sufficient for the government to declare a breach, and Defendant shall not be deemed to have cured
25 a breach without the express agreement of the government in writing. If the government declares
26 this Memorandum breached, and the Court finds such a breach to have occurred, then: (a) if
27

1 Defendant has previously entered a guilty plea pursuant to this Memorandum, Defendant will not
2 be able to withdraw the guilty plea, and (b) the government will be relieved of all its obligations
3 under this Memorandum.

4 II. PENALTY

5 26. The maximum penalty for a violation of Title 18, United States Code, Section
6 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant is
7 also subject to supervised release for a term of not greater than five (5) years.

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

13 28. Defendant is required to pay for the costs of imprisonment, probation, and
14 supervised release, unless the Defendant establishes that the Defendant does not have the ability to
15 pay such costs, in which case the court may impose an alternative sanction such as community
16 service.

17 III. ELEMENTS

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

20 a. First, from at least as early as in or about August 2003 through at least in or about
21 February 2009, there was an agreement between two or more persons to commit wire and mail
22 fraud;

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

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

26 IV. FACTS

27 30. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

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

3 32. From as early as in or about August 2003 through at least in or about February
4 2009, Defendant knowingly participated in a scheme to control various Homeowner Association
5 (HOA) boards of directors so that the HOA boards would award the handling of construction
6 defect lawsuits and remedial construction contracts to a law firm and construction company
7 designated by Defendant's co-conspirators.

8 33. In order to accomplish this scheme, in or around October 2006, Defendant agreed
9 to act as a straw purchaser at Terrasini, a Nevada HOA community. In fact, Defendant's co-
10 conspirators provided the down payments and monthly payments, including HOA dues and
11 mortgage payments, for this property and were the true owners. Defendant signed and submitted a
12 false and fraudulent loan application and closing document to a financial institution in order to
13 finance and close on this property on behalf of her co-conspirators. At the direction of co-
14 conspirators, Defendant also used her position at a mortgage company to help process other co-
15 conspirators' loan applications.

16 34. In other instances, co-conspirators transferred an interest in a HOA unit to another
17 co-conspirator to make it appear as if the co-conspirator was a bonafide homeowner.

18 35. Defendant's co-conspirators managed and operated the payments associated with
19 maintaining many, in not all, of the straw properties owned and controlled by co-conspirators by
20 running a so-called "Bill Pay Program," pursuant to which Defendant and others funded the
21 properties through several limited liability companies and at the direction of a co-conspirator.
22 Many of the payments for these straw properties were wired from California to Nevada.

23 36. The straw purchasers and the co-conspirators who acquired a transferred interest in
24 these properties agreed to run for election to the respective HOA boards. In or around November
25 2007, Defendant ran for election to the Terrasini HOA board, but was never elected. Once co-
26 conspirators were elected to the board, they breached their statutory fiduciary duties to the
27 homeowners by accepting compensation, gratuity, and other remuneration from their co-

1 conspirators that improperly influenced, or reasonably appeared to influence, their decisions,
2 resulting in a conflict of interest. They subsequently voted in a manner directed by and favorable to
3 the co-conspirators.

4 37. To ensure the straw purchasers would win the elections, co-conspirators, including
5 Defendant, employed deceitful tactics, such as creating false phone surveys to gather information
6 about homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town
7 homeowners unlikely to participate in the elections, and submitting fake and forged ballots. Co-
8 conspirators also hired private investigators to find "dirt" on the bonafide candidates in order to
9 create smear campaigns. Defendant participated by creating fake ballots and campaign flyers for the
10 co-conspirator candidates.

11 38. Another tactic Defendant and her co-conspirators used to rig certain HOA board
12 elections was to prepare forged ballots for out-of-town homeowners and either cause them to be
13 transported or mailed to California and thereafter to have the ballots mailed back to Las Vegas from
14 various locations around California so as to make it appear that the ballots were completed and
15 mailed by bonafide homeowners residing outside Nevada. Defendant participated by mailing the
16 ballots from Nevada to California and tracking their return to Nevada.

17 39. Co-conspirators also attempted to create the appearance that the elections were
18 legitimate by hiring independent attorneys to run the HOA board elections. The homeowners were
19 led to believe that these "special election masters" were supposed to: (i) contact the bonafide
20 homeowners to inform them of the election; (ii) mail the bonafide homeowners election ballots and
21 voting instructions; (iii) collect and secure those election ballots returned by mail until the date of
22 the election; and, (iv) preside over the HOA board election, including supervising the counting of
23 ballots. However, they, too, were paid in cash, check, and promised things of value, by or on behalf
24 of Defendant's co-conspirators for their assistance in rigging the elections. On several occasions,
25 Defendant was provided access to the special election master's office to pre-view the election
26 ballots. Defendant also took several ballots that had been mailed by bonafide homeowners so that
27 they were not counted during the election.

1 40. Once elected to the board, the co-conspirator board members would meet with
2 other co-conspirators in order to manipulate board votes, including the selection of property
3 managers, contractors, and general counsel for the HOA and attorneys to represent the HOA.

4 41. Often the co-conspirators created and submitted fake bids for “competitors” to
5 make the process appear to be legitimate while ensuring co-conspirators were awarded the contract.
6 In addition, Co-Conspirator A’s initial contract for emergency remediation repairs contained a
7 “right of first refusal” clause to ensure that a co-conspirator was awarded the construction repair
8 contracts following the construction defect litigation.

9 42. Once hired, the co-conspirator property managers and general counsel were paid
10 in cash, check, or things of value for using their positions to gain inside information and
11 recommend that the HOA board hire a co-conspirator for remediation and construction defect
12 repairs and another co-conspirator for the construction defect litigation. At the direction of her co-
13 conspirators, Defendant worked at two property management companies to gain inside information
14 about the HOA board and help to control the elections and votes. Defendant was also involved in
15 scanning and emailing contracts and payment arrangements between the construction company and
16 the litigation attorney.

17 43. This process created the appearance of legitimacy since bonafide homeowners
18 believed the elected board members and property managers were, as fiduciaries, acting in their best
19 interest rather than to advance the financial interests of co-conspirators. In fact, Defendant and
20 others were paid or received things of value by or on behalf of their co-conspirators for their
21 assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using
22 their positions to manipulate the HOA’s business and to further the goals of the conspiracy, and to
23 enrich the co-conspirators at the expense of the HOA and the bonafide homeowners.

24 **V. ACKNOWLEDGMENT**

25 44. Defendant acknowledges by the Defendant’s signature below that Defendant has
26 read this Plea Memorandum, that Defendant understands the terms and conditions, and the factual
27 basis set forth herein, that Defendant has discussed these matters with Defendant’s attorney, and

1 that the matters set forth in this memorandum, including the facts set forth in Part IV above, are true
2 and correct.

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

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

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

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

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

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

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

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

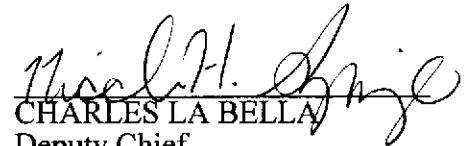
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47. Defendant, Defendant's attorney, and the attorney for the United States acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by and between the parties, and that no other promise has been made or implied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

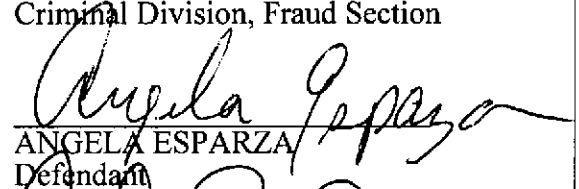
AUGUST 17, 2011
DATED

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

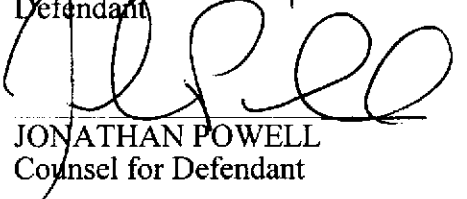

CHARLES LA BELLA
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United States Department of Justice
Criminal Division, Fraud Section

August 19, 2011
DATED


ANGELA ESPARZA
Defendant

August 19, 2011
DATED


JONATHAN POWELL
Counsel for Defendant