

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:11-cr-417-ORL-31DAB
18 U.S.C. § 1343

ANDREW J. NUSBAUM

Defendant.

PLEA AGREEMENT

The United States of America and Andrew J. Nusbaum ("the Defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The Defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;

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- (g) to appeal his conviction, if he is found guilty; and
- (h) to appeal the imposition of sentence against him.

AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS

2. The Defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The Defendant also agrees to waive any objection or defense he might have based on the United States joining in a single count, as set forth in the Information, multiple distinct and separate offenses of wire fraud. The Defendant understands that this waiver is knowingly and voluntarily made after fully conferring with, and on the advice of, his counsel. The Defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal Defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the Defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the Defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a). Pursuant to Fed. R. Crim. P. 7(b), the Defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Middle District of

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Florida. The Information will charge the Defendant with committing wire fraud in the Middle District of Florida and elsewhere, beginning in or about March 2006, and continuing until in or about April 2007, in violation of 18 U.S.C. § 1343.

3. The Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United States agrees that, at the arraignment, it will stipulate to the release of the Defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

ELEMENTS AND FACTUAL BASIS FOR OFFENSE CHARGED

4. The elements and factual basis for the offense charged are as follows:

(a) Elements of the Offense. The Defendant acknowledges understanding the nature and elements of the offense with which Defendant has been charged and to which Defendant is pleading guilty. The elements of the offense are:

- (i) The Defendant knowingly devised or participated in a scheme and artifice to defraud, or to obtain money or property by using false pretenses, representations, or promises;
- (ii) The false pretenses, representations, or promises were about a material fact;
- (iii) The Defendant acted with the intent to defraud; and

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(iv) The Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme and artifice to defraud.

(b) Factual Basis for the Offense. The Defendant is pleading guilty because Defendant is in fact guilty. The Defendant certifies that Defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

(i) Background. For purposes of this Plea Agreement, the "relevant period" is the period beginning in or about March 2006, and continuing until in or about April 2007. During the relevant period, the Defendant owned a construction company ("Company A") that was a registered vendor with Ocwen Loan Servicing, LLC ("Ocwen"), a property management company organized and existing under the laws of Delaware, with its headquarters in West Palm Beach, Florida. Also during the relevant period, Defendant's brother, JOSHUA R. NUSBAUM, was employed as a Residential Sales Manager ("RSM") (also known as a Residential Sales Consultant ("RSC")) by Ocwen. During the relevant period, Ocwen managed foreclosed properties under contract with the U.S. Department of Veterans Affairs ("the VA") in the Middle District of Florida, and throughout the United States. Throughout and prior to the relevant period, the VA guaranteed qualifying residential mortgages for veterans. Under the contract between the VA and Ocwen, if a veteran

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defaulted (and after foreclosure), Ocwen completed necessary repairs and re-sold the property. After any repairs were completed, Ocwen billed VA for the cost of these repairs. This process of repairing and re-selling is colloquially called VA-REO. The Ocwen employees who handled VA-REO were called RSMs or RSCs (hereinafter referred to collectively as "RSMs"). Company A, under the direction of Defendant, performed work on VA-REO houses. Throughout the relevant period, for purposes of VA-REO, Ocwen's principal place of business was in Orlando, Florida.

(ii) The Scheme and Artifice. During the relevant period, the Defendant knowingly and willfully participated in a scheme and artifice to defraud the VA, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and intending to defraud the VA.

(iii) Manner and Means. During the relevant period, the Defendant and JOSHUA R. NUSBAUM agreed to steer repair contracts for VA-REO houses to Company A, which was registered with Ocwen as a VA-REO vendor. VA rules usually required multiple competitive bids for any particular repair contract; JOSHUA R. NUSBAUM, however, would either (a) provide Defendant with price information from competitive bids from unrelated companies, so that Defendant could undercut those competitive bids by a nominal amount; or (b) fail to obtain competitive bids for work that JOSHUA R. NUSBAUM intended to steer to Company A. Defendant and JOSHUA R. NUSBAUM thus subverted the competitive bidding

process required under the terms of the contract between Ocwen and the VA, and gave the false appearance of competition where, in fact, there was none. Defendant paid JOSHUA R. NUSBAUM for steering jobs to Company A. Throughout the relevant period, Defendant and JOSHUA R. NUSBAUM implicitly and explicitly represented to Ocwen and the VA that Company A was awarded jobs by JOSHUA R. NUSBAUM based on actual competition, when in fact JOSHUA R. NUSBAUM steered contracts to Company A based on a family relationship and in expectation of payments from the Defendant. Neither Ocwen nor the VA would have awarded housing repair contracts to Company A had they known about the payments or the lack of actual competition. The scheme and artifice caused an indeterminate, though real, loss to the VA because Company A was awarded contracts without the benefit of competitive bidding. Throughout the relevant period, the Defendant made about \$14,000 in payments to JOSHUA R. NUSBAUM under this scheme. The portion of the scheme and artifice in which the Defendant participated affected repair contracts for forty-five properties in the Middle District of Florida and elsewhere throughout the United States.

(iv) Wires. Throughout the relevant period, in Orlando, in the Middle District of Florida, and elsewhere, the Defendant and JOSHUA R. NUSBAUM, for the purpose of executing the scheme and artifice described above, caused to be transmitted by means of wire communication in interstate commerce numerous writings, signals, and

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sounds, including emails, facsimiles, and telephone calls, all in violation of Section 1343 of Title 18 of the United States Code. Many, though not all, of these interstate wire communications were sent and made from Orlando, Florida, to various worksites in Alabama, Georgia, North Carolina, and South Carolina, where Defendant travelled to inspect prospective housing repair jobs, and from those various worksites to Orlando, Florida. These communications included sending competitive bid information from JOSHUA R. NUSBAUM to Defendant and transmitting bids from Company A to Ocwen.

POSSIBLE MAXIMUM SENTENCE

5. The Defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1343 is:

- (a) a term of imprisonment for twenty years (18 U.S.C. § 1343);
- (b) a fine in an amount equal to the greatest of (1) \$250,000, (2) twice the gross pecuniary gain derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 1343; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of at least two years, but not more than three years, following any term of imprisonment. If the Defendant violates any condition of supervised release, the Defendant could be required to serve up to two years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3);

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and United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") § 5D1.2(a)(2)).

6. In addition, the Defendant understands that:

(a) pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii), the Court shall order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the Defendant to pay a \$100 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The Defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The Defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the Defendant provides to the United States pursuant to this Plea Agreement will not be used in determining the Defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

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SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), and subject to the continuing, full, and truthful cooperation of the Defendant, as described in Paragraph 11 of this Plea Agreement, the United States agrees that it will recommend as the appropriate disposition of this case, that the Court impose a sentence requiring the Defendant to pay restitution; requiring the Defendant to pay the United States a criminal fine within the range of \$1,000 to \$10,000 (subject to the Defendant's ability to pay under U.S.S.G. § 5E1.2(e)), payable in full before the fifteenth (15th) day after the date of judgment; and a period of imprisonment of four to ten months; both fine and imprisonment being consistent with Offense Level 9 under the Sentencing Guidelines ("the recommended sentence"). The Defendant is free to recommend any sentence based on 18 U.S.C. § 3553(a). The Defendant understands that the United States will oppose any recommendation that does not include a fine or a sentence of imprisonment within the Guidelines range for Offense Level 9, or restitution. The United States also reserves the right to comment on or to correct any representation made by or on behalf of the Defendant, and to supply any other information that the Court may require. The United States calculates the applicable Guidelines as follows.

(a) The base guideline is U.S.S.G. § 2B1.1, with a base offense level of 7.

(b) Pursuant to U.S.S.G. § 2B1.1(b)(1)(C), the base offense level is increased by 4 because the known gain from the offense is \$14,000. Pursuant

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to Application Note 3(B) to U.S.S.G. § 2B1.1, gain is an appropriate alternative measure of loss, because loss reasonably cannot be determined.

(c) The Defendant should receive a two-level adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a). The resulting Offense Level would therefore be 9.

(d) The parties are not aware of any information which would impact the Defendant's criminal history category. If no other information is discovered, the Defendant's criminal history category would be I. The parties understand that the Defendant's criminal history category is determined by the Court.

(e) Pursuant to U.S.S.G. § 5E1.2(b), the Guidelines Fine Range for an individual with Offense Level 9 is between \$1,000 to \$10,000.

(f) The Defendant understands that the Court will order him to pay a \$100 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(A), in addition to any fine imposed.

The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines range or any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties each reserve the right to argue for the amount of restitution and fine that they believe is appropriate and consistent with the Sentencing Guidelines, and the Defendant understands that the United States may argue for a fine

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up to that provided by Sentencing Guideline § 5E1.2. The Defendant is free to argue for any sentence based on 18 U.S.C. § 3553(a).

9. Subject to the continuing, full, and truthful cooperation of the Defendant described in Paragraph 11 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of (a) the fact, manner, and extent of the Defendant's cooperation, as well as his commitment to prospective cooperation with the United States' investigation and prosecutions, (b) all material facts relating to the Defendant's involvement in the charged offense, and (c) all other relevant conduct of the Defendant.

10. The United States and the Defendant understand that the Court retains complete discretion to accept or reject either party's sentencing recommendation provided in Paragraph 8 of this Plea Agreement. The Defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with either party's sentencing recommendation contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

11. The Defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal criminal laws involving the repair of VA-REO properties in the state of Florida and throughout the United States, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to

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which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the Defendant shall include, but not be limited to:

(a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the Defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews at mutually agreed upon locations, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

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GOVERNMENT'S AGREEMENT

12. Subject to the full, truthful, and continuing cooperation of the Defendant, as described in Paragraph 11 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence, the United States will not bring further criminal charges against the Defendant for any Relevant Offense consisting of (a) any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of the scheme and artifice described in Paragraph 4 of this Plea Agreement; or (b) any act or offense that the Defendant disclosed to the United States pursuant to U.S.S.G. § 1B1.8 prior to the date of this Plea Agreement concerning a related or similar scheme and artifice to defraud. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

13. The Defendant understands that he may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the Defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

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REPRESENTATION BY COUNSEL

14. The Defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The Defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the Defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the Defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

15. The Defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the Defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

16. The Defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the Defendant has failed to provide full and truthful cooperation, as described in Paragraph 11 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the Defendant or his counsel in writing by personal or overnight

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delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the Defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The Defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the Defendant for any Relevant Offense, the statute of limitations period for such offense shall be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

17. The Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the Defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the Defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

18. This Plea Agreement constitutes the entire agreement between the United States and the Defendant concerning the disposition of the criminal charge in this case.

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This Plea Agreement cannot be modified except in writing, signed by the United States and the Defendant.

19. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.


DATED: 02 December 2011 Respectfully submitted,

BY:


Andrew J. Nusbaum
Defendant


Harrison T. Slaughter, Jr.
Counsel for Andrew J. Nusbaum

BY:


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