

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 1:12-cr-20037-DLG

UNITED STATES OF AMERICA

vs.

DANILO P. PEREZ,

Defendant. /

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida and the United States Department of Justice - Antitrust Division (hereinafter individually and collectively referred to as the "Government") and **DANILO P. PEREZ** (hereinafter referred to as the "defendant") hereby enter into the following agreement.

1. The defendant agrees to plead guilty to counts I-IV of the information, which counts charge the defendant with having committed violations of 18 U.S.C. § 371 (conspiracy to commit violation of 18 U.S.C. § 215(a)(2)) (count I) and 26 U.S.C. § 7206(1) (tax fraud) (counts II-IV).

2. The defendant is aware that the sentence will be imposed by the

Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter referred to as "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and the defendant may not withdraw

the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

- (a) Maximum term of imprisonment: count I - 5 years; counts II-IV- 3 years per count.
- (b) Mandatory minimum term of imprisonment: None on any count.
- (c) Terms of supervised release following any term of imprisonment: 0 to 3 years on count I; 0 to 1 year on counts II - IV. 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)(4) and (a)(5); 18 U.S.C. §§ 3583(b)(2), (b)(3) and (e)(3); and Sentencing Guideline §5D1.2(a).
- (d) Maximum fine: the greater of \$250,000 or twice the gross pecuniary gain from the crime or twice the gross pecuniary loss caused to the victim of the crime (18 U.S.C. § 3571(b) and (d)) on each of counts I-IV).

(e) Full restitution to Ocean Bank, the victim of count I, and in connection with which the parties herewith stipulate and agree: (i) to recommend to the Court that said restitution be in the amount of \$496,200.42 for Ocean Bank payable to the Clerk of Court of this District Court unless defendant can demonstrate to the Court that he has already provided said amount to Ocean Bank; (ii) that count I is an offense covered by the mandatory restitution provisions of 18 U.S.C. § 3663(A) and that this agreement should be interpreted as additionally providing for an agreement to pay such restitution under 18 U.S.C. § 3663(a)(3); and (iii) that this restitution amount also arises out of fraud upon Ocean Bank committed by the defendant that could have been charged under additional federal criminal statutes, including, but not by way of limitation, 18 U.S.C. §§ 1341, 1343, 1344, 1346, and 1349, and that those offenses gave rise to this agreement.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a

special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in the amount of \$400 (\$100 per count) will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. The Government reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, the Government further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The Government agrees that it will recommend at sentencing that the Court reduce the sentencing guideline level applicable to the defendant's offenses, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the Government will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of

the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. The United States further agrees to recommend that the defendant be sentenced at the low end of the guideline range, as that range is determined by the Court. The United States, however, will not be required to make this motion and these recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; and (2) is found to have misrepresented facts to the Government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

7. The Government and the defendant agree that, although not binding on the probation office or the Court, the following recommendations will be made to the Court so that the Court may make findings and

conclusions as to the sentence to be imposed:

- (a) Both the Government and the defendant agree that the dollar amount under Sentencing Guideline §2B4.1(b)(1) is more than \$400,000 and less than or equal to \$1,000,000 and that said amount is to be used in determining defendant's sentence for count I of the information. Specifically, the Government and the defendant agree to recommend to the Court and the probation office that this figure is \$496,200.42;
- (b) The Government will advise the Court and the probation office that the following adjustments to the Sentencing Guidelines calculation should apply, provided, however, that the Government will fully advise the Court and the probation office of all facts necessary to the Court's and the probation office's determination of whatever other adjustments, if any, to the Sentencing Guidelines calculation the Court and the probation office shall deem appropriate as to said count:
 - (i) count I - Sentencing Guideline §3B1.3 (abuse of trust)

- two points; and

- (ii) counts I - IV - Sentencing Guideline §3D1.4
(determining the combined offense level) - additional
points, if any, attributable when determining
combined offense level for counts I-IV

The defendant shall be free to dispute the application of the
aforesaid enumerated Sentencing Guideline points in this
paragraph 7(b) on legal grounds (if any), but not on factual
grounds, and same would not be interpreted to deprive
defendant of acceptance of responsibility;

- (c) The Government and the defendant agree to advise the
Court and the probation office that the dollar amount to be
used under Sentencing Guideline §2T1.1(a)(1) as a tax loss
for count II (tax year 2005), count III (tax year 2006), count
IV (tax year 2007) of the information, and tax loss from
previous years to be included as relevant conduct, is more
than \$80,000 and less than or equal to \$200,000.

Specifically, the Government agrees that it will advise the
Court and the probation office that the tax loss amount for

defendant's tax years 2001-2007 is as follows, and the defendant shall be free to advise the Court and the probation office if defendant differs with those amounts except that the defendant does agree that the aforesaid range of more than \$80,000 and less than or equal to \$200,000 is correct and should be used for sentencing purposes:

Tax Year 2001 - \$33,952.92

Tax Year 2002 - \$20,924.85

Tax Year 2003 - \$13,475.00

Tax year 2004 - \$19,372.50

count II - Tax year 2005 - \$20,040.22

count III - Tax year 2006 - \$48,440.29

count IV - Tax year 2007 - \$22,858.98; and

- (d) The Government will advise the Court and the probation office that a two-point adjustment under Sentencing Guideline §2T1.1(b)(1) (income derived from criminal activity) to the Sentencing Guideline calculation for counts II-IV of the information should apply; provided, however,

that the Government will fully advise the Court and the probation office of all facts necessary to their determination of whatever other adjustments to the guidelines calculation, if any, should be appropriate for counts II-IV (including Sentencing Guideline §2T1.1(b)(2) (sophisticated means) - two points). The defendant shall be free to dispute the application of the aforesaid enumerated Sentencing Guideline points in this paragraph 7(d) on legal grounds (if any), but not on factual grounds, and same would not be interpreted to deprive defendant of acceptance of responsibility.

8. The Government and the defendant agree that, although not binding on the probation office and the Court, they will jointly recommend that the Court impose a sentence within the advisory sentencing guideline range produced by the application of the Sentencing Guidelines. Although not binding on the probation office or the Court, the Government and the defendant further agree that, except as otherwise expressly contemplated in this plea agreement, they will jointly recommend that the Court neither depart upward nor depart downward under the Sentencing Guidelines when

determining the advisory sentencing guideline range in this case.

9. Defendant agrees to cooperate with the United States Internal Revenue Service ("IRS") in its civil examination, determination, assessment, and collection of income taxes related to the defendant's 2001-2007 income tax returns, and further agrees not to conceal, transfer, or dissipate funds or property that could be used to satisfy such taxes, penalties, and interest. The defendant agrees to provide the IRS any documentation in the defendant's possession and/or control requested by the IRS in connection with its civil examination, determination, assessment, and collection of such income taxes prior to sentencing. The defendant further knowingly and voluntarily agrees to waive any statute of limitations with respect to assessment and collection of the defendant's individual and corporate/entity tax liabilities concerning tax years 2001-2007.

10. The defendant agrees to prepare and file accurate amended individual income tax returns for the tax years 2001-2007, by no later than the time of defendant's sentencing, unless the IRS shall not deem it necessary. The defendant also agrees to pay all taxes, interest, and penalties due and owing to the IRS, including all taxes, interest, and penalties on the defendant's individual and any related corporate/entity liabilities for the tax

years 2001-2007, by no later than the time of the defendant's sentencing. The defendant agrees that the taxes due and owing to the IRS, excluding interest and penalties, for the tax years 2001-2007 are, at least that as set out for those years in paragraph 7 hereof. Nothing in this agreement shall limit the IRS in its civil determination, assessment, and collection of any taxes, interest, and/or penalties that the defendant may owe and the IRS shall have the right, should it so choose, to settle for less than the full amount of taxes, interest, and penalties due for said years.

11. The defendant agrees that any statements made by the defendant to the IRS and/or in this agreement shall be admissible against the defendant without any limitation in any civil or criminal proceeding and the defendant stipulates to the authenticity and admissibility, in any civil or criminal proceeding, of any documentation provided by the defendant to the IRS. The defendant hereby waives any protection afforded by Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure with regard to any such statements and documentation. In the event that the defendant withdraws from this agreement prior to pleading guilty and/or fails to fully comply with any of the terms of this agreement, the United States will, at its option, be released from its obligations under this agreement, but

under no circumstances shall the defendant be released from the agreements and wavier made by the defendant in this and the proceeding two paragraphs.

12. The defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 1291 afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the Government in this plea agreement, the defendant hereby waives all rights conferred by § 3742 and § 1291 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or duty to appeal as set forth in 18 U.S.C. Code § 3742(b) and 28 U.S.C. § 1291. However, if the United States appeals the defendant's sentence pursuant to § 3742(b) and § 1291, the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal wavier set forth in this agreement with the defendant's attorney. The defendant further agrees, together with the United States, to request that the Court enter a specific finding that the defendant's waiver of the defendant's right to appeal the sentence to be imposed in this case was knowing and voluntary.

13. The defendant is aware that the sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office, or the Court. The defendant understands further that any recommendation that the government makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

14. Defendant agrees not to, without prior written approval of both the Federal Deposit Insurance Corporation and that of the appropriate federal financial institution's regulatory agency, as those regulatory agencies are enumerated in 12 U.S.C. § 1818(e)(7)(D):

- (a) apply for or hold a position as an employee, officer or director of

any financial institution or organization enumerated in 12 U.S.C.

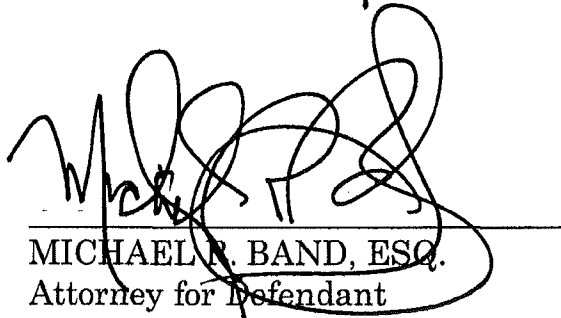
§ 1818(e)(7)(A) or 18 U.S.C. § 20;

- (b) participate in any manner in the conduct of the affairs of any financial institution or organization enumerated in 12 U.S.C. § 1818(e)(7)(A) or 18 U.S.C. § 20;
- (c) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent or authorization with respect to any voting rights in any financial institution or organization enumerated in 12 U.S.C. § 1818(e)(7)(A) or 18 U.S.C. § 20;
- (d) violate any voting agreement previously approved by the appropriate federal banking agency; or
- (e) vote for a director of any financial institution or organization enumerated in 12 U.S.C. § 1818(e)(7)(A) or 18 U.S.C. § 20, or serve or act as an institution or organization-affiliated party.

In furtherance of this restriction, defendant agrees to enter into a Stipulation and Consent to the Issuance of an Order of Prohibition from Further Participation with the Federal Deposit Insurance Corporation.

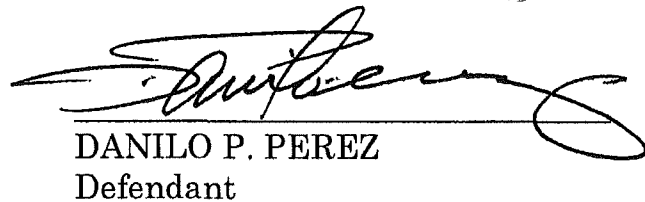
15. This is the entire agreement and understanding between the Government and the defendant. There are no other agreements, promises, representations, or understandings.

Dated: 25 January 2012



A handwritten signature in black ink, appearing to read 'Michael R. Band', written over a horizontal line.

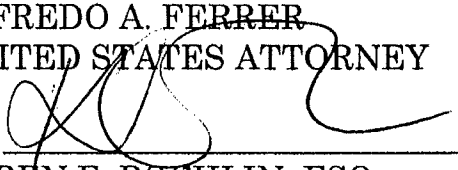
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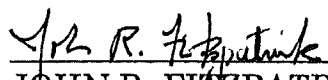


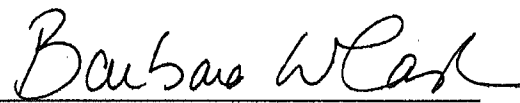
A handwritten signature in black ink, appearing to read 'Danilo P. Perez', written over a horizontal line.

DANILO P. PEREZ
Defendant

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