

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-20572-CR-COOKE  
18 U.S.C. § 1349

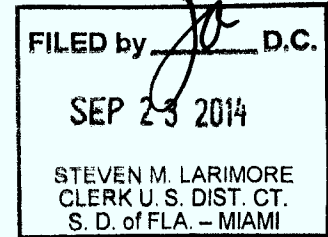
UNITED STATES OF AMERICA

vs.

DAYRON PEÑA,

**Defendant.**

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**PLEA AGREEMENT**

The United States of America and DAYRON PEÑA (hereinafter referred to as the “defendant”) enter into the following agreement:

1. The defendant agrees to waive indictment and plead guilty to Count 1 of the Information, which charges the defendant with conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349.

2. The defendant agrees to a reasonable statement of offense to be filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of offense, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter “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 that sentence; 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 sentence. 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 that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to 20 years, followed by a term of supervised release of up to 3 years. In addition to a term of imprisonment and supervised release, the Court also may impose a fine of up to \$250,000, or twice the gross gain to the defendant or twice the gross loss to victims, whichever is greater, may order forfeiture, and must also order restitution.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

6. The Office of the United States Attorney for the Southern District of Florida and the Criminal Division of the United States Department of Justice (hereinafter “the Government”) reserve 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 reserve the right to make any recommendation as to the quality and quantity of punishment.

7. The Government agrees to recommend at sentencing that the Court reduce by 3 levels the sentencing guideline level applicable to the defendant’s offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant’s recognition and affirmative and timely acceptance of personal responsibility. However, the Government will not be required to make this sentencing recommendation if the defendant: (1) fails or refuses to make full, accurate and complete disclosure to the Probation Office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the Government prior to entering 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.

8. The Government and the defendant agree that, although not binding on the Probation Office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

- (a). That the base offense level is 7 under U.S.S.G. § 2B1.1(a);

(b). Loss: That the parties agree to recommend that the defendant's loss be calculated as the actual loss to the United States Housing and Urban Development related to the mortgage fraud scheme for four properties for which the defendant was the loan officer, including: 3212 NE 12 Street #204 and #205; and, 890 NW 45<sup>th</sup> Avenue #29 and #45, plus any commissions he received on these 4 properties. These were the 4 properties known to the government at the time the defendant first met and was debriefed by government agents, and at that time, the government agreed to recommend loss only based on these 4 properties. The loss associated with these four properties is approximately \$857,349 (this amount is an estimate because several of these properties are currently in default but have not yet foreclosed). The defendant also received at least \$10,000 in commissions for his role in these 4 properties. Therefore, the relevant amount of actual, probable or intended loss under Section 2B1.1(b)(1)(H) of the Sentencing Guidelines resulting from the offense committed in this case is more than \$400,000 but less than \$1,000,000, resulting in a 14-level enhancement;

(c). Aggravating Role: That the defendant was an organizer and leader of the fraud scheme under Section 3B1.1(b) of the Sentencing Guidelines resulting in a 3-level enhancement; and,

(d). Total Offense Level: That the applicable offense level under all of the circumstances of the offense committed by the defendant, and assuming a 3-level departure for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines, is Level 21.

9. The defendant agrees to pay restitution as determined by the Court. The

Government is not limited by the loss figure above when arguing for restitution. The defendant also agrees to forfeitures as ordered by the Court, and at least in the amount of \$10,000, which represents the commission money he received related to the 4 properties listed above.

10. The defendant agrees that he shall cooperate fully with the Government by:

(a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by the Government, whether in interviews, before a grand jury, or at any trial or other court proceeding;

(b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by the Government; and,

(c) if requested by the Government, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct under the supervision of, and in compliance with, law enforcement officers and agents.

11. The Government reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If in the sole and unreviewable judgment of the Government, the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the court's downward departure from the sentence required by the Sentencing Guidelines, the Government may at or before sentencing make a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, 18 U.S.C. §3553(e), or a Rule 35 motion subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require the Government to file such a motion and

that the Government's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

12. The defendant understands and acknowledges that the Court is under no obligation to grant a Government motion pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 11 of this agreement, should the Government exercise its discretion to file such a motion.

13. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is 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 3 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. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charges identified in paragraph 1 above or otherwise fails to fully comply with any of the terms of this plea agreement, the Government will be released from its obligations under

this agreement, and the defendant agrees and understands that: (a) he thereby waives any protection afforded by the proffer letter agreement between the parties, signed by the defendant on April 18, 2012, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by him as part of plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against him without any limitation in any civil or criminal proceeding brought by the Government; and, (b) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or her representatives to any state or federal agency and/or the Government.

15. The defendant hereby knowingly and voluntarily waives any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information against the defendant with respect to any criminal offenses in connection with the defendant's criminal conduct described in paragraph one (1) above.

16. The defendant is aware that Title 18, United States Code, Section 3742 affords 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 Section 3742 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 from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the Government's right and/or duty to appeal as set

forth in Title 18, United States Code, Section 3742(b). However, if the Government appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the Government, to request that the Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

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


WIFREDO A. FERRER  
UNITED STATES ATTORNEY

DENIS J. McINERNEY  
Chief  
Criminal Division, Fraud Section  
U.S. Department of Justice


Date: \_\_\_\_\_

By:  
MARY ANN McCARTHY  
Trial Attorney

Date: 8-29-12

By:   
LAWRENCE BESSER  
Attorney for Defendant

Date: 8-29-12

By:   
DAYRON PEÑA  
Defendant




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DENIS J. McINERNEY  
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Criminal Division, Fraud Section  
U.S. Department of Justice


Date: 9/6/2012

By:   
MARY ANN McCARTHY  
Trial Attorney

Date: 8-29-12

By:   
LAWRENCE BESSER  
Attorney for Defendant

Date: 8-29-12

By:   
DAYRON PEÑA  
Defendant