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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES MCCHESENEY,

Defendant.

CASE NO. 2:13-cr-00018-JCM-GWF

PLEA MEMORANDUM

The United States of America, by and through William Stellmach, Acting Chief, U.S. Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief, and Thomas B.W. Hall and Alison L. Anderson, Trial Attorneys, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, CHARLES MCCHESENEY ("Defendant"), and the defendant's attorney, Douglass A. Mitchell, submit this plea memorandum.

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

1 **I. THE PLEA AGREEMENT**

2 **A. The Plea**

3 1. Defendant will plead guilty to each count in which he is named in the Indictment
4 in the above-captioned case, charging Defendant with conspiracy to commit wire and mail fraud,
5 in violation of Title 18, United States Code, Section 1349 (Count 1) and wire fraud, in violation
6 of Title 18, United States Code, Section 1343 (Counts 4, 13, and 14).

7 **B. Additional Charges**

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

13 **C. Sentencing Guideline Calculations**

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

20 4. Sentencing Guidelines:

21 a. The parties have no agreement concerning the sentencing guidelines except as to
22 the following guidelines:

- 23 1) The Base Offense Level is 7, pursuant to U.S.S.G. §2B1.1(a); and
24 2) The Aggravating Role enhancement is +2, pursuant to U.S.S.G.
25 §3B1.1(c).

26 5. Acceptance of Responsibility: Pursuant to U.S.S.G. §3E1.1(a), the United States

1 will recommend that the defendant receive a 2-level adjustment for acceptance of responsibility
2 unless Defendant (a) fails to make a complete factual basis for the guilty plea at the time it is
3 entered; (b) is untruthful with the Court or probation officers in any respect, including without
4 limitation, financial information; (c) denies involvement in the offense or provides conflicting
5 statements regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e)
6 engages in criminal conduct; (f) fails to appear in court; or (g) violates the conditions of
7 defendant's pretrial release conditions. Pursuant to U.S.S.G. §3E1.1(b), the United States will,
8 in its sole discretion, make a motion for an additional 1-level adjustment for acceptance of
9 responsibility prior to sentencing if the defendant timely notifies the United States of the
10 defendant's intention to plead guilty, thereby permitting the United States to avoid preparing for
11 trial and allowing for the efficient allocation of resources.

12 6. Defendant's Criminal History Category will be determined by the Court.

13 **D. Other Sentencing Matters**

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

22 8. The stipulations in this Plea Memorandum do not bind either the United States
23 Probation Office or the Court.

24 **E. Fines and Special Assessment**

25 9. Defendant agrees that the Court may impose a fine due and payable immediately
26 upon sentencing.

1 10. Defendant will pay the special assessment of \$100 per count of conviction at the
2 time of sentencing.

3 **F. Restitution & Forfeiture**

4 11. Defendant understands that restitution is mandatory and agrees to make full
5 restitution in this case. The parties have no understanding or agreement on the amount of
6 restitution or forfeiture, and the Defendant understands that the restitution and forfeiture amounts
7 will be determined by the Court at his sentencing. Defendant understands that any restitution
8 imposed by the Court may not be discharged in whole or in part in any present or future
9 bankruptcy proceeding.

10 **G. Waiver of Appeal**

11 12. In exchange for the concessions made by the United States in this Plea
12 Memorandum, Defendant knowingly and expressly waives the right to appeal his guilty plea and
13 conviction. Defendant also waives all collateral challenges, including any claims under 28
14 U.S.C. § 2255, to Defendant's conviction and the procedures by which the Court adjudicated
15 guilt, except non-waivable claims of ineffective assistance of counsel.

16 13. Defendant only reserves the right to appeal only his sentence and the manner in
17 which that sentence was determined on the grounds set forth in Title 18, United States Code,
18 Section 3742.

19 **H. Limitations**

20 14. This Plea Memorandum is limited to the Criminal Division of the United States
21 Department of Justice and cannot bind any other federal, state, or local prosecuting,
22 administrative, or regulatory authority.

23 **I. Cooperation**

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

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

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

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

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

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

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

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

25 e. The truthfulness and completeness in disclosing and providing to the
26 Government, upon request, any document, record, or other evidence relating to matters about

1 which the Government or any designated law enforcement agency inquires, including but not
2 limited to, Defendant's personal finances;

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

5 g. The timeliness of Defendant's assistance.

6 19. Defendant agrees that in the event the United States files a downward departure
7 motion based upon Defendant's substantial assistance, the United States reserves the right to
8 make a specific recommendation to the Court regarding the extent of such a departure.
9 Defendant understands and agrees that the final decision as to how much of a departure, if any, is
10 warranted rests solely with the Court.

11 **J. Breach**

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

23 **II. PENALTY**

24 21. The maximum penalty for a violation of Title 18, United States Code, Section
25 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant
26 is also subject to supervised release for a term of not greater than five (5) years.

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IV. FACTS

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

28. Defendant specifically admits and declares under penalty of perjury that all of the facts set forth below in Paragraphs 28-46 of which Defendant has knowledge as a member of the conspiracy are true and correct. The parties agree that some of the facts outlined below in Paragraphs 28-46 were actions taken by Defendant's co-conspirators and without the knowledge or involvement of Defendant at the time; however, Defendant acknowledges that he knew of the unlawful purpose of the conspiracy and knowingly joined it. Defendant therefore recognizes that he is responsible as a member of the conspiracy for those actions that were taken by his co-conspirators in furtherance of the conspiracy. Defendant's actions in furtherance of the conspiracy are specifically indicated.

29. From as early as in or around August 2003, Defendant knowingly participated in a scheme to control various Homeowners' 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.

30. The conspirators would identify HOAs which potentially could bring construction defect cases, and once identified would enlist real estate agents to identify condominium units within those HOA communities for purchase.

31. Co-conspirators would then enlist individuals as straw purchasers to apply for and complete mortgage loans using their own name and credit for the purchase of properties within the HOA communities on behalf of the beneficial owners. The co-conspirators arranged for the straw purchasers to get the necessary funding for the mortgages by assisting them with the loan applications and closing documents, which included false and fraudulent statements that involved concealing the identity and financial interest of the true beneficial owners of the properties from banks, mortgage companies, HOAs, and bona fide homeowners. The co-conspirator real estate agents arranged for the down payments to be funded by a co-conspirator and arranged for the money to be transferred to the escrow accounts.

1 32. Once the straw purchases were complete, the beneficial owners and co-
2 conspirators often found tenants to rent the units. The beneficial owners received the rental
3 payments and continued to pay the mortgages and various expenses associated with the straw
4 purchase.

5 33. Co-conspirators were hired to manage the payments associated with maintaining
6 these straw properties. The co-conspirators called this business of funding these properties the
7 "Bill Pay Program." The co-conspirators involved in running the Bill Pay Program maintained
8 several limited liability companies, at the direction of the co-conspirator construction company
9 owner and others, for the purpose of opening bank accounts and concealing the Bill Pay Program
10 funds. Many of the payments on these properties were wired or caused to be wired from
11 California to Nevada.

12 34. On several occasions, instead of making a straw purchase, the co-conspirators
13 transferred a partial interest in a unit to another co-conspirator for the purpose of making it
14 appear as if the co-conspirator was a bona fide homeowner. The co-conspirator real estate agent
15 would assist with the paperwork involved in such transfers and arranged for the completion of
16 the paperwork.

17 35. Many of the straw purchasers and those who acquired a transferred interest in the
18 properties agreed with co-conspirators to run for election to the respective HOA Board of
19 Directors. These co-conspirators were paid or promised cash, checks, or things of value for their
20 participation, all of which resulted in a personal financial benefit to the co-conspirators.

21 36. Defendant McChesney acquired an interest in a condominium at the Chateau
22 Nouveau HOA. He was then elected to the Chateau Nouveau HOA board of directors in July
23 2006. He served on the board until at least September 2008. He served on the board with a
24 number of co-conspirators, including David Ball and Salvatore Ruyolo.

25 37. To ensure the co-conspirators would win the elections, co-conspirators at times
26 employed deceitful tactics, such as creating false phone surveys to gather information about
homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town homeowners

1 unlikely to participate in the elections, and submitting fake and forged ballots. Co-conspirators
2 also hired private investigators to uncover negative information on the bona fide candidates in
3 order to create smear campaigns. Defendant McChesney served as a private investigator for the
4 conspiracy and provided information that was used to develop content for negative HOA
5 campaign materials.

6 38. Another tactic the co-conspirators used to rig certain HOA board elections was to
7 prepare forged ballots for out-of-town homeowners and either cause them to be transported or
8 mailed to California and thereafter to have the ballots mailed back to Las Vegas from various
9 locations around California so as to make it appear that the ballots were completed and mailed by
10 bona fide homeowners residing outside Nevada. For instance, on or about April 15, 2008 and on
11 or about April 21, 2008, a co-conspirator mailed ballots from several mail boxes in California
12 back to Nevada in order to assist in the rigging of an election at Park Avenue.

13 39. On several occasions, co-conspirators attempted to create the appearance that the
14 elections were legitimate by hiring "independent" attorneys to run the HOA board elections.
15 These "special election masters" were to: (i) contact the bona fide homeowners to inform them
16 of the election; (ii) mail the bona fide homeowners election ballots and voting instructions; (iii)
17 collect and secure those election ballots returned by mail until the date of the election; and (iv)
18 preside over the HOA board election, including supervising the counting of ballots. However, in
19 truth and fact, the "special election masters" were selected by the co-conspirators and paid in
20 cash, check, or promised things of value, by or on behalf of the co-conspirator construction
21 company and its owner, for their assistance in rigging the elections. In particular, the "special
22 election masters" allowed the co-conspirators to access the ballots for the purpose of opening the
23 ballots and pre-counting the votes entered for each candidate to then know the number of fake
24 ballots which needed to be created to ensure the co-conspirator up for election won the seat on
25 the HOA board. These attorneys would run the board election knowing the co-conspirators had
26 access to the ballots and concealed their relationship with the co-conspirators from the bona fide
homeowners.

1 40. Once elected, the straw purchaser board members and those who acquired a
2 transferred interest would meet with the co-conspirators in order to manipulate board votes,
3 including the selection of property managers, contractors, general counsel and attorneys to
4 represent the HOA.

5 41. Specifically, Defendant McChesney while on the Chateau Nouveau HOA board
6 participated in a vote in August 2006 to hire a law firm as directed by co-conspirators; in votes in
7 November 2006 and December 2007 to hire a management companies as directed by co-
8 conspirators; and in a vote in December 2007 to hire a construction company as directed by co-
9 conspirators. Defendant's fellow board members Salvatore Ruvolo and David Ball participated
10 in all or some of these votes according to their tenure on the board of directors, and also voted
11 according to the directions received from co-conspirators.

12 42. At times the co-conspirators created and submitted fake bids for "competitors" to
13 make the process appear to be legitimate while ensuring co-conspirators were awarded the
14 contract. Once hired, co-conspirators, including property managers and general counsel, would
15 then recommend that the HOA board hire the co-conspirator construction company for
16 remediation and construction defect repairs and the co-conspirator law firm to handle the
17 construction defect litigation. In addition, the co-conspirator construction company's initial
18 contract for emergency remediation repairs contained a "right of first refusal" clause to ensure
19 the co-conspirator construction company was awarded the construction repair contracts
20 following the construction defect litigation.

21 43. This entire process created the appearance of legitimacy since bona fide
22 homeowners believed the elected board members and other third party contractors were, as
23 fiduciaries, acting in their best interest rather than to advance the financial interests of co-
24 conspirators. In fact, participants in the scheme – including the Defendant – were paid or
25 received things of value by or on behalf of their co-conspirators for their assistance in purchasing
26 the properties, obtaining HOA membership status, rigging elections, using their positions to

1 manipulate the HOA's business and to further the goals of the conspiracy, and to enrich the co-
2 conspirators at the expense of the HOA and the bona fide homeowners.

3 44. Defendant McChesney further participated in aspects of the conspiracy related to
4 the Vistana HOA. Specifically, in order to extract additional monies from the Vistana HOA
5 construction defect settlement fund to enrich his co-conspirators, Defendant McChesney spoke
6 with attorney Keith Gregory and others in order to facilitate the transfer of the last of those
7 settlement funds to co-conspirator Leon Benzer.

8 **V. ACKNOWLEDGMENT**

9 45. Defendant acknowledges by Defendant's signature below that Defendant has read
10 this Plea Memorandum, that Defendant understands the terms and conditions and the factual
11 basis set forth herein, that Defendant has discussed these matters with Defendant's attorney, and
12 that the matters set forth in this memorandum, including the facts set forth in Part IV above, are
13 true and correct.

14 46. Defendant acknowledges that Defendant has been advised, and understands, that
15 by entering a plea of guilty Defendant is waiving, that is, giving up, certain rights guaranteed to
16 Defendant by law and by the Constitution of the United States. Specifically, Defendant is giving
17 up:

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

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

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

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

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

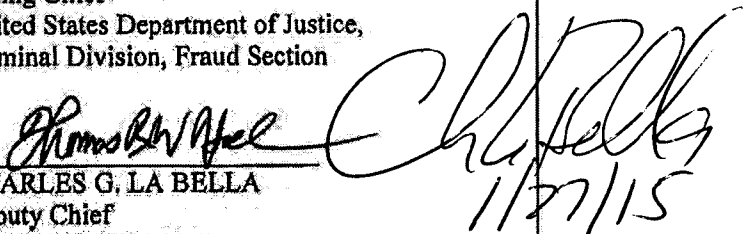
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f. The right to have the assistance of an attorney at all stages of such proceedings.

47. Defendant acknowledges that Defendant is, in all respects, satisfied by the representation provided by Defendant's attorney and that Defendant's attorney has discussed with Defendant the burdens and benefits of this agreement and the rights he waives herein.

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

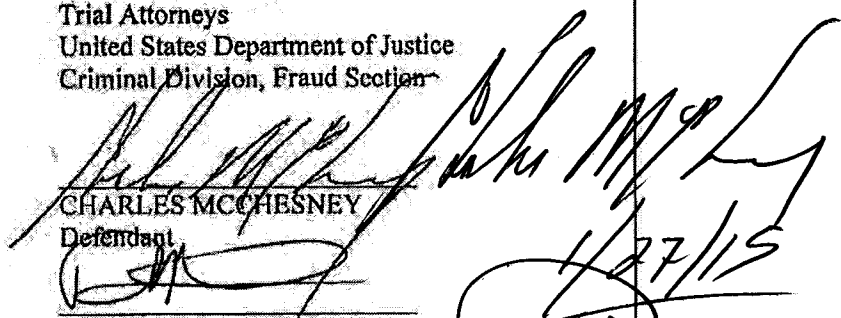
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Acting Chief
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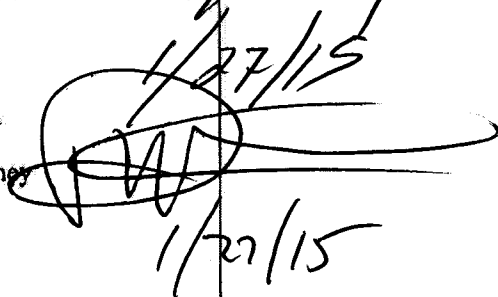
1/26/15
DATED

CHARLES MCCHESENEY
Defendant


1/27/15

1/26/2015
DATED

DOUGLASS A. MITCHELL
Counsel for Defendant McChesney


1/27/15

1/26/2015
DATED