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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

-oOo-

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
EDWARD LUGO,)	
)	
Defendant.)	

CASE NO. 2:11cr299GMN-RJJ
PLEA MEMORANDUM

The United States of America, by and through Denis J. McInerney, Chief, U.S. Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief, Michael J. Bresnick, Assistant Chief, and Nicole Sprinzen and Mary Ann McCarthy, Trial Attorneys, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, EDWARD LUGO, and the defendant's attorney, Ed Robinson, submit this plea memorandum.

I. PLEA AGREEMENT

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

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:

Base Offense Level (U.S.S.G. §2B1.1(a)):	7
Loss Amount of \$400,000 to \$1M (U.S.S.G. §2B1.1(b)(1)(I)):	14
Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(C)):	2
TOTAL	23

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 his 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 lenders that financed the straw
8 purchases in furtherance of the scheme, described below in Section IV. Defendant understands and
9 agrees that this amount could be as much as \$445,000.00, the total purchase price for the
10 properties. The parties further acknowledged, however, that this amount may be reduced at
11 sentencing by any provable down payments and mortgage payments made before February 2009.
12 Defendant understands that any restitution imposed by the Court may not be discharged in whole
13 or in part in any present or future bankruptcy proceeding.

14 **G. Forfeiture**

15 13. In consideration for the government agreeing to the terms of this Plea
16 Memorandum, Defendant knowingly and voluntarily agrees to abandon, forfeit and surrender all
17 interest in all real and personal property received in connection with his participation in the
18 conspiracy. Defendant agrees that Defendant will ask the Court to impose an order of forfeiture
19 consistent with the terms stated above and will not ask the Court to adjust the amount in any
20 respect and will sign a consent order of forfeiture to this effect. Defendant admits that if the case
21 were to proceed to trial, the government could prove forfeiture in excess of the amount stated here.

22 14. Defendant knowingly and voluntarily agrees to abandon or to forfeit the property
23 to the United States.

24 15. Defendant knowingly and voluntarily agrees to relinquish all right, title, and
25 interest in the property.

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1 16. Defendant knowingly and voluntarily agrees to waive his right to any
2 abandonment proceedings, any civil administrative forfeiture proceedings, any civil judicial
3 forfeiture proceedings, or any criminal forfeiture proceedings (“proceedings”) of the property.

4 17. Defendant knowingly and voluntarily agrees to waive service of process of any
5 and all documents filed in this action or any proceedings concerning the property arising from the
6 facts and circumstances of this case.

7 18. Defendant knowingly and voluntarily agrees to waive any further notice to the
8 defendant, the defendant’s agents, or the defendant’s attorney regarding the abandonment or the
9 forfeiture and disposition of the property.

10 19. Defendant knowingly and voluntarily agrees not to file any claim, answer,
11 petition, or other documents in any proceedings concerning the property.

12 20. Defendant knowingly and voluntarily agrees to waive the statute of limitations,
13 the CAFRA requirements, Fed. R. Crim. P. 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional
14 due process requirements of any abandonment proceeding or any forfeiture proceeding concerning
15 the property.

16 21. Defendant knowingly and voluntarily agrees to waive the defendant’s right to a
17 jury trial on the forfeiture of the property.

18 22. Defendant knowingly and voluntarily agrees to waive (a) all constitutional, legal,
19 and equitable defenses to, (b) any constitutional or statutory double jeopardy defense or claim
20 concerning, and (c) any claim or defense under the Eighth Amendment to the United States
21 Constitution, including, but not limited to, any claim or defense of excessive fine in any
22 proceedings concerning the property.

23 23. Defendant knowingly and voluntarily agrees to the entry of an Order of Forfeiture
24 of the property to the United States.

25 24. Defendant knowingly and voluntarily agrees and understands the abandonment,
26 the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the
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1 property shall not be treated as satisfaction of any assessment, fine, restitution, cost of
2 imprisonment, or any other penalty this Court may impose upon the defendant in addition to the
3 abandonment or the forfeiture.

4 **H. Waiver of Appeal**

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

13 26. Defendant also waives all collateral challenges, including any claims under Title
14 18, United States Code, Section 2255, to the defendant's conviction, sentence and the procedure by
15 which the Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective
16 assistance of counsel.

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

18 27. In exchange for the United States entering into this memorandum, Defendant
19 agrees that (a) the facts set forth in Section IV of this Plea Memorandum shall be admissible
20 against the defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (i) for any
21 purpose at sentencing; and (ii) in any subsequent proceeding, including a trial in the event the
22 defendant does not plead guilty or withdraws the defendant's guilty plea, to impeach or rebut any
23 evidence, argument or representation offered by or on the defendant's behalf; and (b) the defendant
24 expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with
25 regard to the facts set forth in Section IV of the Plea Memorandum to the extent set forth above.
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1 28. The parties agree that no promises, agreements, and conditions have been entered
2 into other than those set forth in this plea memorandum, and will not be entered into unless in
3 writing and signed by all parties.

4 **J. Limitations**

5 29. This Plea Memorandum is limited to the Criminal Division of the United States
6 Department of Justice and cannot bind any other federal, state or local prosecuting, administrative,
7 or regulatory authority. But, this Plea Memorandum does not prohibit the United States through
8 any agency thereof, the Criminal Division of the United States Department of Justice, or any third
9 party from initiating or prosecuting any civil proceeding directly or indirectly involving the
10 defendant, including but not limited to, proceedings under the False Claims Act relating to
11 potential civil monetary liability or by the Internal Revenue Service relating to potential tax
12 liability.

13 **K. Cooperation**

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

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

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

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

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

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

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

12 d. The truthfulness and completeness in disclosing and bringing to the attention of
13 the Government all crimes which Defendant has committed and all administrative, civil, or
14 criminal proceedings, investigations, and prosecutions in which she has been or is a subject, target,
15 party, or witness;

16 e. The truthfulness and completeness in disclosing and providing to the Government,
17 upon request, any document, record, or other evidence relating to matters about which the
18 Government or any designated law enforcement agency inquiries, including but not limited to,
19 Defendant's personal finances;

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

22 g. The timeliness of Defendant's assistance.

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

3 **L. Breach**

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

15 **II. PENALTY**

16 36. The maximum penalty for a violation of Title 18, United States Code, Section
17 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant is
18 subject to supervised release for a term of not greater than five (5) years.

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

24 38. Defendant is required to pay for the costs of imprisonment, probation, and
25 supervised release, unless the defendant establishes that the defendant does not have the ability to
26 pay such costs, in which case the court may impose an alternative sanction such as community
27 service.

1 **III. ELEMENTS**

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

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

7 b. Second, the defendant became a member of the conspiracy knowing of at least one
8 of its objects and intending to help accomplish it.

9 **IV. FACTS**

10 40. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

11 41. Defendant specifically admits and declares under penalty of perjury that all of the
12 facts set forth below are true and correct:

13 42. From as early as in or about August 2003 through at least in or about February
14 2009, Defendant knowingly participated in a scheme to control various Homeowner Association
15 (HOA) boards of directors so that the HOA boards would award the handling of construction
16 defect lawsuits and remedial construction contracts to a law firm and construction company
17 designated by Defendant's co-conspirators.

18 43. In order to accomplish this scheme, Defendant agreed to act as a straw purchaser
19 of two properties in Nevada HOA communities: Mission Ridge and Park Avenue. In fact,
20 Defendant's co-conspirators provided most of the down payments and monthly payments,
21 including HOA dues and mortgage payments, for these properties and were the true owners of
22 these properties. Defendant signed and submitted false and fraudulent loan applications and
23 closing documents to financial institutions in order to finance and close on these properties on
24 behalf of his co-conspirators.

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

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1 45. Defendant managed and operated the payments associated with maintaining many,
2 in not all, of the straw properties owned and controlled by co-conspirators by running a so-called
3 “Bill Pay Program,” pursuant to which Defendant and others funded the properties through several
4 limited liability companies and at the direction of a co-conspirator. Defendant wired many of the
5 payments on these straw properties from California to Nevada.

6 46. Defendant, the other straw purchasers, and the co-conspirators who acquired a
7 transferred interest in these properties agreed to run for election to the respective HOA boards.
8 Once elected to the Park Avenue board, Defendant then breached his statutory fiduciary duty to the
9 homeowners by accepting from his co-conspirators compensation, gratuity, and other remuneration
10 that improperly influenced, or reasonably appeared to influence, his decisions, resulting in a conflict
11 of interest. Defendant subsequently voted in a manner directed by and favorable to his co-
12 conspirators.

13 47. To ensure the straw purchasers would win the elections, co-conspirators employed
14 deceitful tactics, such as creating false phone surveys to gather information about homeowners’
15 voting intentions, using mailing lists to vote on behalf of out-of-town homeowners unlikely to
16 participate in the elections, and submitting fake and forged ballots. Co-conspirators also hired
17 private investigators to find “dirt” on the bonafide candidates in order to create smear campaigns.

18 48. Another tactic Defendant and his co-conspirators used to rig certain HOA board
19 elections was to prepare forged ballots for out-of-town homeowners and either cause them to be
20 transported or mailed to California and thereafter to have the ballots mailed back to Las Vegas from
21 various locations around California so as to make it appear that the ballots were completed and
22 mailed by bonafide homeowners residing outside Nevada.

23 49. Co-conspirators also attempted to create the appearance that the elections were
24 legitimate by hiring independent attorneys to run the HOA board elections. The homeowners were
25 led to believe that these “special election masters” were supposed to: (i) contact the bonafide
26 homeowners to inform them of the election; (ii) mail the bonafide homeowners-election ballots and
27 voting instructions; (iii) collect and secure those election ballots returned by mail until the date of

1 the election; and, (iv) preside over the HOA board election, including supervising the counting of
2 ballots. However, they, too, were paid in cash, check, and promised things of value, by or on behalf
3 of Defendant's co-conspirators for their assistance in rigging the elections.

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

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

12 52. Once hired, the co-conspirator property managers and general counsel were paid
13 in cash, check, or things of value for using their positions to gain inside information and
14 recommend that the HOA board hire a co-conspirator for remediation and construction defect
15 repairs and another co-conspirator for the construction defect litigation. At the direction of his co-
16 conspirators, Defendant worked at a property management company to learn more about the
17 business and to gain inside information about HOA boards considering construction defect
18 litigation.

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

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

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

- a. The right to proceed to trial by jury on the original charges, or to a trial by a judge if Defendant and the United States both agree;
- b. The right to confront the witnesses against Defendant at such a trial, and to cross-examine them;
- c. The right to remain silent at such trial, with such silence not to be used against Defendant in any way;
- d. The right, should Defendant so choose, to testify in Defendant's own behalf at such a trial;
- e. The right to compel witnesses to appear at such a trial, and to testify in Defendant's behalf; and,
- f. The right to have the assistance of an attorney at all stages of such proceedings.

56. 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 Memorandum and the rights that Defendant has waived herein.

57. Defendant, Defendant's attorney, and the attorney for the United States

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

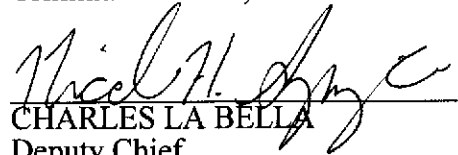
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JULY 13, 2011
DATED

JULY 22, 2011
DATED

July 20, 2011
DATED


DENIS MCINERNEY
Chief
United States Department of Justice,
Criminal Division, Fraud Section


CHARLES LA BELLA
Deputy Chief

MICHAEL BRESNICK
Assistant Chief
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EDWARD LUGO
Defendant


ED ROBINSON
Counsel for Defendant