

**ORIGINAL**

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		DISTRICT COURT
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL J. SOLOMON,

Defendant.

CASE NO 2:11-cr-00383-LDG -PAL

**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, DANIEL J. SOLOMON, and the defendant's attorney, Jack Buchanan, 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:

**A. The Plea**

1. Defendant will plead guilty to Count One of the information, charging defendant with conspiracy to commit wire and mail fraud, in violation of Title 18, United States Code, Section 1349. Defendant also agrees to pay restitution and to the forfeiture of the property set forth in this Plea Memorandum.

**B. Additional Charges**

2. The U.S. Department of Justice, Criminal Division, Fraud Section, agrees to bring no additional criminal charges in the District of Nevada against the defendant relating to or arising from the offenses charged in the information, except for any crime of violence and any crime unknown to the Fraud Section before the time the parties sign this Plea Memorandum.

**C. Sentencing Guideline Calculations**

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

4. The parties agree that the following calculations of the United States Sentencing Guidelines (2010) apply:

Base Offense Level (U.S.S.G. §2B1.1(a)):	7
Loss Amount of \$120,000 to \$200,000 (U.S.S.G. §2B1.1(b)(1)(F)):	10
Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(c)):	2
TOTAL	19

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 downward adjustment for acceptance of responsibility unless  
3 Defendant (a) fails to make a complete factual basis for the guilty plea at the time it is entered; (b)  
4 is untruthful with the Court or probation officers in any respect, including, without limitation,  
5 financial information; (c) denies involvement in the offense or provides conflicting statements  
6 regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in  
7 criminal conduct; (f) fails to appear in court; or (g) violates the conditions of Defendant's pretrial  
8 release conditions.

9           6. Pursuant to U.S.S.G. §3E1.1(b), the United States will, in its sole discretion, make  
10 a motion for an additional one-level downward adjustment for acceptance of responsibility prior to  
11 sentencing if the defendant timely notifies the United States of the defendant's intention to plead  
12 guilty, thereby permitting the United States to avoid preparing for trial and allowing for the  
13 efficient allocation of resources.

14           7. Defendant's Criminal History Category will be determined by the court.

15 **D. Other Sentencing Matters**

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

24           9. The stipulations in this agreement do not bind either the United States Probation  
25 Office or the Court. Both Defendant and the United States are free to: (a) supplement the facts by  
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1 supplying relevant information to the United States Probation Office and the Court, and (b) correct  
2 any and all factual inaccuracies relating to the calculation of the sentence.

3 **E. Fines and Special Assessment**

4 10. Defendant agrees that the Court may impose a fine due and payable immediately  
5 upon sentencing.

6 11. Defendant will pay the special assessment of \$100 per count of conviction at the  
7 time of sentencing.

8 **F. Restitution**

9 12. Defendant agrees to make restitution to the lenders that financed the straw  
10 purchases in furtherance of the scheme, described below in Section IV. Defendant understands and  
11 agrees that this amount could be as much as \$155,229.38, which is the total purchase price for the  
12 property at Vistana, less down payments and mortgage payments made before the foreclosure of  
13 the property and by the amount of the sale of the property at foreclosure plus the amount of monies  
14 he was paid by co-conspirators for his participation in the scheme. The parties further  
15 acknowledge, however, that this amount may be reduced at sentencing by any further provable  
16 down payments and mortgage payments made before February 2009. Defendant understands that  
17 any restitution imposed by the Court may not be discharged in whole or in part in any present or  
18 future bankruptcy proceeding.

19 **G. Forfeiture**

20 13. The parties agree that the government will not request that the Court require  
21 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless  
22 order that Defendant shall pay forfeiture, the government agrees that such amount shall be the total  
23 purchase price for the property, reduced by any provable down payments and mortgage payments  
24 made before any foreclosure of the property and by the amount of any sale of the property by the  
25 foreclosing bank or its assignee, and in no event more than \$155,229.38. In the event of any order  
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1 by the Court that Defendant shall pay forfeiture, the Defendant knowingly and voluntarily agrees to  
2 the following:

3 a. to abandon or to forfeit the property to the United States;

4 b. to relinquish all right, title, and interest in the property;

5 c. to waive his right to any abandonment proceedings, any civil administrative  
6 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture  
7 proceedings ("proceedings") of the property;

8 d. to waive service of process of any and all documents filed in this action or any  
9 proceedings concerning the property arising from the facts and circumstances of this case;

10 e. to waive any further notice to the defendant, the defendant's agents, or the  
11 defendant's attorney regarding the abandonment or the forfeiture and disposition of the property;

12 f. not to file any claim, answer, petition, or other documents in any proceedings  
13 concerning the property;

14 g. to waive the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.  
15 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due process requirements of any  
16 abandonment proceeding or any forfeiture proceeding concerning the property;

17 h. to waive the defendant's right to a jury trial on the forfeiture of the property;

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

22 j. to the entry of an Order of Forfeiture of the property to the United States.

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

3 **H. Waiver of Appeal**

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

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

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

17           17. In exchange for the United States entering into this memorandum, Defendant  
18 agrees that (a) the facts set forth in Section IV of this Plea Memorandum shall be admissible  
19 against the defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (i) for any  
20 purpose at sentencing; and (ii) in any subsequent proceeding, including a trial in the event the  
21 defendant does not plead guilty or withdraws the defendant's guilty plea, to impeach or rebut any  
22 evidence, argument or representation offered by or on the defendant's behalf; and (b) the defendant  
23 expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with  
24 regard to the facts set forth in Section IV of the Plea Memorandum to the extent set forth above.

18. The parties agree that no promises, agreements, and conditions have been entered into other than those set forth in this plea memorandum, and will not be entered into unless in writing and signed by all parties.

**J. Limitations**

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

**K. Cooperation**

20. Defendant agrees, if requested by the United States, to provide complete and truthful information and testimony concerning Defendant's knowledge of all other persons who 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.

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

22. Defendant agrees that a motion for downward departure based on substantial assistance shall not be made under any circumstances unless Defendant's cooperation is deemed to be substantial assistance by the government. The United States has made no promise, implied or otherwise, that Defendant will be granted a departure for substantial assistance. Further, no promise has been made that such a motion will be made even if Defendant complies with the terms

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         23. 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         24. 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 25. Defendant agrees that if Defendant, at any time after the signature of this Plea  
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 26. 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 27. 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 28. 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  
2 **III. ELEMENTS**

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

5 a. First, from at least as early as in or about January 2006 through at least in or about  
6 February 2009, there was an agreement between two or more persons to commit mail fraud and  
7 wire fraud;

8 b. Second, the defendant was a party to or a member of that agreement; and

9 c. Third, the defendant became a member of the conspiracy knowing of at least one  
10 of its objects and intending to help accomplish it.

11 **IV. FACTS**

12 30. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

13 31. Defendant specifically admits and declares under penalty of perjury that all of the  
14 facts set forth below are true and correct:

15 32. From as early as in or about January 2006 through in or about February 2009,  
16 Defendant knowingly participated in a scheme to control various Homeowner Association (HOA)  
17 boards of directors so that the HOA boards would award the handling of construction defect  
18 lawsuits and remedial construction contracts to a law firm and construction company designated by  
19 Defendant's co-conspirators.

20 33. In order to accomplish this scheme, Defendant agreed to act as a straw purchaser at  
21 Vistana. In fact, Defendant's co-conspirators provided the down payments and monthly payments,  
22 including HOA dues and mortgage payments, for this property and were the true owners of the  
23 property. Defendant signed and submitted false and fraudulent loan applications and closing  
24 documents to the financial institution in order to finance and close on the property on behalf of his  
25 co-conspirators. Defendant represented that the unit would be "owner occupied" when in fact it  
26 was not. Defendant lived in another unit purchased by co-conspirators in furtherance of the  
27 conspiracy.

1           34. Co-conspirators managed and operated the payments associated with maintaining  
2 many, if not all, of the straw properties owned and controlled by co-conspirators by running a so-  
3 called "Bill Pay Program," pursuant to which co-conspirators funded the properties through several  
4 limited liability companies at the direction of a co-conspirator. Many of these payments were  
5 wired from California to Nevada.

6           35. To ensure the straw purchasers would win the elections, co-conspirators employed  
7 deceitful tactics, such as creating false phone surveys to gather information about homeowners'  
8 voting intentions, using mailing lists to vote on behalf of out-of-town homeowners unlikely to  
9 participate in the elections, and submitting fake and forged ballots. Co-conspirators also hired  
10 private investigators to find "dirt" on the bonafide candidates in order to create smear campaigns.

11           36. Another tactic Defendant's co-conspirators used to rig certain HOA board elections  
12 was to prepare forged ballots for out-of-town homeowners and either cause them to be transported  
13 or mailed to California and thereafter to have the ballots mailed back to Las Vegas from various  
14 locations around California so as to make it appear that the ballots were completed and mailed by  
15 bonafide homeowners residing outside Nevada.

16           37. Co-conspirators also attempted to create the appearance that the elections were  
17 legitimate by hiring independent attorneys to run the HOA board elections. The homeowners were  
18 led to believe that these "special election masters" were supposed to: (i) contact the bonafide  
19 homeowners to inform them of the election; (ii) mail the bonafide homeowners election ballots and  
20 voting instructions; (iii) collect and secure those election ballots returned by mail until the date of  
21 the election; and, (iv) preside over the HOA board election, including supervising the counting of  
22 ballots. However, they, too, were paid in cash, check, and promised things of value, by or on behalf  
23 of Defendant's co-conspirators for their assistance in rigging the elections.

24           38. Once the Defendant purchased the property for his co-conspirators, and thus  
25 purported to become a member of the HOA community, he ran for election to the Vistana HOA  
26 board of directors. Defendant then breached his statutory fiduciary duty to the homeowners by  
27

1 accepting from his co-conspirators compensation, gratuity, and other remuneration that improperly  
2 influenced, or reasonably appeared to influence, his decisions, resulting in a conflict of interest.

3 39. Once elected to the board, the co-conspirator board members would meet with  
4 other co-conspirators in order to manipulate board votes, including the selection of property  
5 managers, contractors, and general counsel for the HOA and attorneys to represent the HOA. The  
6 Defendant either attended these meetings or took direction from co-conspirators who attended these  
7 meetings instructing him to vote in furtherance of the conspiracy.

8 40. Often the co-conspirators created and submitted fake bids for "competitors" to  
9 make the process appear to be legitimate while ensuring co-conspirators were awarded the contract.  
10 Once hired, co-conspirators, including property managers, were paid in cash, check, or things of  
11 value for using their positions to gain inside information and recommend that the HOA board hire a  
12 co-conspirator for remediation and construction defect repairs and another co-conspirator for the  
13 construction defect litigation. In addition, the co-conspirator construction company's initial  
14 contract for emergency remediation repairs contained a "right of first refusal" clause to ensure that a  
15 co-conspirator was awarded the construction repair contracts following the construction defect  
16 litigation.

17 41. Defendant used his position on the board to vote in a manner directed by and  
18 favorable to certain co-conspirators. Specifically, Defendant participated in the following votes,  
19 among others: (i) on or about July 20, 2007, vote to agree to settle the construction defect lawsuit  
20 for \$19,000,000; (ii) on or about September 7, 2007, vote to award the construct defect remediation  
21 contract to the co-conspirator construction company; and, (iii) on or about November 16, 2007, vote  
22 to pay \$1,528,250 to the co-conspirator construction company, which was followed by several other  
23 votes for payment to the same co-conspirator, related to the construction defect remediation work.

24 42. This process created the appearance of legitimacy since bonafide homeowners  
25 believed the elected board members and property managers were, as fiduciaries, acting in their best  
26 interest rather than to advance the financial interests of co-conspirators. In fact, Defendant and  
27 others were paid or received things of value by or on behalf of their co-conspirators for their

1 assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using  
 2 their positions to manipulate the HOA's business and to further the goals of the conspiracy, and to  
 3 enrich the co-conspirators at the expense of the HOA and the bonafide homeowners.

#### 4 **V. ACKNOWLEDGMENT**

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

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

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

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

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

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

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

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

25 45. Defendant acknowledges that defendant is, in all respects, satisfied by the  
 26 representation provided by Defendant's attorney and that Defendant's attorney has discussed with  
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1 defendant the burdens and benefits of this Memorandum and the rights that Defendant has waived herein.

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

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10 Oct. 4, 2011  
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19 DATED

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