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9  
10 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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12  
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DEBORAH GENATO,

17 Defendant.

CASE NO. 0:11-CR-339-LDG-GWF

PLEA MEMORANDUM

18 The United States of America, by and through Denis J. McInerney, Chief, U.S.  
19 Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief,  
20 Michael J. Bresnick, Assistant Chief, and Nicole Sprinzen and Mary Ann McCarthy, Trial  
21 Attorneys, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant,  
22 DEBORAH GENATO, and the defendant's attorney, Mace Yampolsky, submit this plea  
23 memorandum.

24 I. PLEA AGREEMENT

25 The United States and the defendant have reached the following plea agreement, which is  
26 not binding on the court:  
27

**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 \$10,000 to \$30,000 (U.S.S.G. §2B1.1(b)(1)(C)):	4
Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(C)):	2
<b>TOTAL</b>	<b>13</b>

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 may be  
18 considered in determining the offense level, specific offense characteristics, and other related  
19 factors. In that event, the defendant will not withdraw her plea of guilty. Both the defendant and  
20 the United States are free to: (a) supplement the facts by supplying relevant information to the  
21 United States Probation Office and the Court, and (b) correct any and all factual inaccuracies  
22 relating to the calculation of the sentence.

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

1           16. Defendant knowingly and voluntarily agrees to waive her 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, Defendant's agents, or 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 Defendant's right to a jury  
17 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  
27

1 of this Plea in all respects but has been unable to provide substantial assistance as determined in  
 2 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 he 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 inquires, 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  
 26  
 27

### III. ELEMENTS

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

a. First, from at least as early as in or about February 2007 through at least in or about February 2009, there was an agreement between two or more persons to commit wire and mail fraud;

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

c. Third, Defendant joined the agreement or conspiracy knowing of at least one of its objects and intending to help accomplish it.

### IV. FACTS

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

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

42. From as early as in or about February 2007 through at least in or about February 2009, Defendant knowingly participated in a scheme to control various Homeowner 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.

43. In order to accomplish this scheme, co-conspirators acted as straw purchasers of properties in numerous Nevada HOA communities. The co-conspirators managed and operated the payments associated with maintaining these straw properties by running a so-called "Bill Pay Program," pursuant to which the co-conspirators funded the properties through several limited liability companies and at the direction of a co-conspirator. Many of the payments on these straw properties were wired from California to Nevada. Co-conspirators also transferred an interest in some of the units to other co-conspirators to make it appear as if the co-conspirator was a bonafide homeowner.

1           44. The straw purchasers and those who acquired a transferred interest in a unit agreed  
2 to run for election to the respective HOA boards. These co-conspirators were paid in cash, check,  
3 or promised things of value for their participation, all of which resulted in a personal financial  
4 benefit to the co-conspirators.

5           45. To ensure these co-conspirators would win the elections, Defendant and her co-  
6 conspirators employed deceitful tactics, such as creating false phone surveys to gather information  
7 about homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town  
8 homeowners unlikely to participate in the elections, and submitting fake and forged ballots. Co-  
9 conspirators also hired private investigators to find "dirt" on the bonafide candidates in order to  
10 create smear campaigns. Defendant used her position as property manager at Vistana, Park Avenue,  
11 and Chateau Nouveau by providing mailing lists, labels, and other voting materials to create fake  
12 election ballots. She also allowed co-conspirators to gain access to the election ballots that had  
13 been mailed into the property management company by the bonafide homeowners prior to the  
14 election date.

15           46. Another tactic the co-conspirators used to rig certain HOA board elections was to  
16 prepare forged ballots for out-of-town homeowners and either cause them to be transported or  
17 mailed to California and thereafter to have the ballots mailed back to Las Vegas from various  
18 locations around California so as to make it appear that the ballots were completed and mailed by  
19 bonafide homeowners residing in other states.

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



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

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

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

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

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

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

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

16           54. Defendant acknowledges that Defendant is, in all respects, satisfied by the  
17 representation provided by Defendant's attorney and that Defendant's attorney has discussed with  
18 Defendant the burdens and benefits of this agreement and the rights that Defendant has waived  
19 herein.



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

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8  
9     AUGUST 9, 2011  
10    DATED

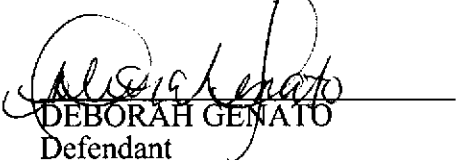
DENIS J. McINERNEY  
Chief  
United States Department of Justice,  
Criminal Division, Fraud Section

  
CHARLES LA BELLA

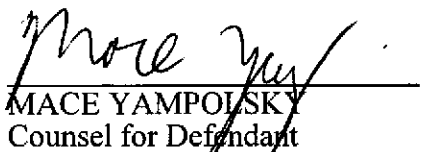
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15     9/23/2011  
16    DATED

  
DEBORAH GENATO  
Defendant

17     9/23/2011  
18    DATED

  
MACE YAMPOLSKY  
Counsel for Defendant