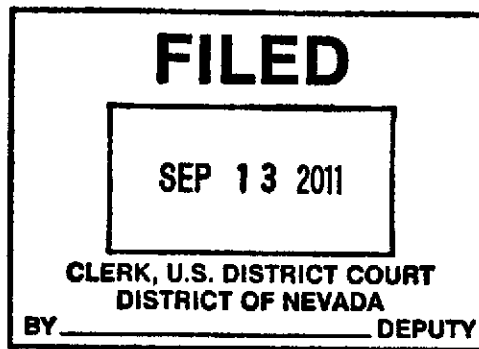


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8



9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

11 -oOo-

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MARCELLA Z. TRIANA,

16 Defendant.  
17

CASE NO. 2:11-cr-298-KJD-LRL

**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 MARCELLA Z. TRIANA, and the defendant's attorney, Todd Leventhal, 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

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:

20	Base Offense Level (U.S.S.G. §2B1.1(a)):	7
21		
22	Loss Amount of \$120,000 to \$200,000 (U.S.S.G. §2B1.1(b)(1)(F)):	10
23		
24	Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(C)):	2
25		
26	TOTAL	19

27

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 do not bind either the United States Probation Office or  
24 the Court. Both defendant and the United States are free to: (a) supplement the facts by supplying  
25 relevant information to the United States Probation Office and the Court, and (b) correct any and  
26 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 lender that financed her straw  
8 purchase in furtherance of the scheme, described below in Section IV. Defendant understands and  
9 agrees that this amount could be as much as \$199,000, the purchase price for the property. The  
10 parties further acknowledge, however, that this amount may be reduced at sentencing by any  
11 provable down payments and mortgage payments made before February 2009. Defendant  
12 understands that any restitution imposed by the Court may not be discharged in whole or in part in  
13 any present or future bankruptcy proceeding.

14 **G. Forfeiture**

15 13. The parties agree that the government will not request that the Court require  
16 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless  
17 order that Defendant shall pay forfeiture, the government agrees that such amount shall be the total  
18 purchase price for the property reduced, by any provable down payments and mortgage payments  
19 made before any foreclosure of the property and by the amount of any sale of the property by the  
20 foreclosing bank or its assignee, and in no event more than \$199,000. In the event of any order by  
21 the Court that Defendant shall pay forfeiture, the Defendant knowingly and voluntarily agrees to  
22 the following:

- 23 a. to abandon or to forfeit the property to the United States;  
24 b. to relinquish all right, title, and interest in the property;  
25 c. to waive his right to any abandonment proceedings, any civil administrative  
26  
27

1 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture  
2 proceedings (“proceedings”) of the property;

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

5 e. to waive any further notice to the defendant, the defendant’s agents, or the  
6 defendant’s attorney regarding the abandonment or the forfeiture and disposition of the property;

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

9 g. to waive the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.  
10 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due process requirements of any  
11 abandonment proceeding or any forfeiture proceeding concerning the property;

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

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

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

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

23 **H. Waiver of Appeal**

24 25. In exchange for the concessions made by the United States in this Plea ,  
25 Defendant knowingly and expressly waives the right to appeal any sentence that is imposed within  
26 the applicable Sentencing Guideline range as calculated by the Court, further waives the right to  
27

1 appeal the manner in which that sentence was determined on the grounds set forth in Title 18,  
2 United States Code, Section 3742, and further waives the right to appeal any other aspect of the  
3 conviction or sentence, including any order of restitution and forfeiture. Defendant reserves only  
4 the right to appeal any portion of the sentence that is an upward departure from the applicable  
5 Sentencing Guideline range calculated by the Court.

6 26. Defendant also waives all collateral challenges, including any claims under 28  
7 U.S.C. § 2255, to the Defendant's conviction, sentence and the procedure by which the Court  
8 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of  
9 counsel.

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

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

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

22 **J. Limitations**

23 29. This Plea is limited to the Criminal Division of the United States Department of  
24 Justice and cannot bind any other federal, state or local prosecuting, administrative, or regulatory  
25 authority. But, this Plea Memorandum does not prohibit the United States through any agency  
26 thereof, the Criminal Division of the United States Department of Justice, or any third party from  
27

1 initiating or prosecuting any civil proceeding directly or indirectly involving the Defendant,  
2 including but not limited to, proceedings under the False Claims Act relating to potential civil  
3 monetary liability or by the Internal Revenue Service relating to potential tax liability.

4 **K. Cooperation**

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

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

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

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

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

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

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

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

8           e.     The truthfulness and completeness in disclosing and providing to the Government,  
9 upon request, any document, record, or other evidence relating to matters about which the  
10 Government or any designated law enforcement agency inquires, including but not limited to,  
11 Defendant's personal finances;

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

14           g.     The timeliness of Defendant's assistance.

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

20 **L.   Breach**

21           35.    Defendant agrees that if Defendant, at any time after the signature of this  
22 Memorandum and execution of all required certifications by Defendant, Defendant's counsel, and  
23 for the government, knowingly violates or fails to perform any of Defendant's obligations under  
24 this Memorandum ("a breach"), the government may declare this Memorandum breached. All of  
25 Defendant's obligations are material, a single breach of this is sufficient for the government to  
26 declare a breach, and Defendant shall not be deemed to have cured a breach without the express  
27



1 agreement of the government in writing. If the government declares this Memorandum breached,  
2 and the Court finds such a breach to have occurred, then: (a) if Defendant has previously entered a  
3 guilty plea pursuant to this Memorandum, Defendant will not be able to withdraw the guilty plea,  
4 and (b) the government will be relieved of all its obligations under this .

## 5 II. PENALTY

6 36. The maximum penalty for a violation of Title 18, United States Code, Section  
7 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant is  
8 also subject to supervised release for a term of not greater than five (5) years.

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

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

## 18 III. ELEMENTS

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

21 a. First, from at least as early as in or about fall 2005 through at least in or about  
22 February 2009, there was an agreement between two or more persons to commit wire and mail  
23 fraud;

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

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

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**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 at least as early as in or about fall 2005 until 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, Defendant agreed to act as a straw purchaser of a property in the Nevada HOA community Chateau Versailles. In fact, Defendant's co-conspirators provided the down payment and monthly payments, including HOA dues and mortgage payments, for this property and were the true owners of the property. Defendant signed and submitted a false and fraudulent loan application and closing documents to a financial institution in order to finance and close on the property on behalf of her co-conspirators.

44. Once the Defendant purchased the property for her co-conspirators, and thus purported to become a member of the HOA community, she ran for election to the HOA board of directors. Defendant then breached her statutory fiduciary duty to the homeowners by accepting from her co-conspirators compensation, gratuity, and other remuneration that improperly influenced, or reasonably appeared to influence, her decisions, resulting in a conflict of interest. Defendant subsequently voted in a manner directed by and favorable to her co-conspirators, including voting to hire property managers and general counsel as they directed in order to give their scheme the appearance of legitimacy, and ultimately to hire a law firm and construction company designated by his co-conspirators to handle a construction defect case and remedial repairs at the HOA.



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

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

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

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

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

10         50.     Defendant acknowledges that Defendant is, in all respects, satisfied by the  
11 representation provided by Defendant's attorney and that Defendant's attorney has discussed with  
12 Defendant the burdens and benefits of this agreement and the rights that Defendant has waived  
13 herein.

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

18  
19  
20  
21  
22         7/20/11  
23         DATED

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


  
CHARLES LA BELLA

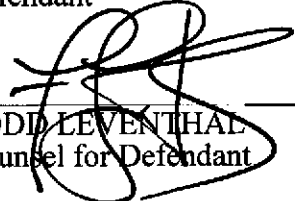
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07-19-2011  
DATED

7/19/11  
DATED

  
MARCELLA Z. TRIANA  
Defendant

  
TODD LEVENTHAL  
Council for Defendant