

FILED IN OPEN COURT

10-8-09

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CLERK, U S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

v.

BARRY C. WESTERGOM

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:
:

Case No. 3:09-cr-286-J-STEM

PLEA AGREEMENT

A. Particularized Terms

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Brian Albritton, United States Attorney for the Middle District of Florida, and the defendant, BARRY C. WESTERGOM, and the attorney for the defendant, Scott Kalisch, mutually agree as follows:

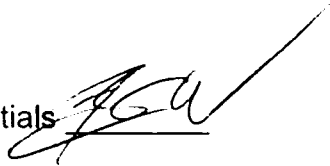
1. Count Pleading To

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the defendant with conspiracy to commit wire and bank fraud, in violation of 18 U.S.C. § 1349.

2. Maximum Penalties

Count One carries maximum penalties of a term of imprisonment of up to thirty years, a fine of up to \$1,000,000, or both a term of imprisonment and a fine, a term of supervised release of up to five years, and a special assessment of \$100, said special assessment to be due on the date of sentencing. With respect to supervised release, should the defendant violate any of the terms of supervised release upon

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AF Approval



release from incarceration, if any, the defendant could receive an additional term of imprisonment of up to three years. The defendant also is subject to an order of restitution and an order of forfeiture, as set forth below.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

- First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the Information;
- Second: That the defendant, knowing the unlawful purpose of the plan, willfully joined in it;
- Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the methods (or "overt acts") described in the Information; and
- Fourth: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

4. No Further Charges Arising Out of Underlying Conduct

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge the defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement that arise out of the conduct forming the basis of the charge in this case.

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5. Acceptance of Responsibility - Three Levels

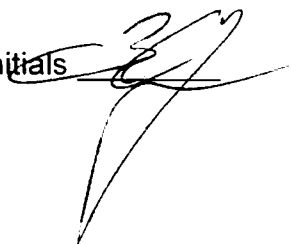
At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant complies with the provisions of USSG § 3E1.1(b), the United States agrees to file a motion pursuant to USSG § 3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

6. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and

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other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending: (1) a downward departure from the applicable guideline range pursuant to USSG § 5K1.1; or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e); or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

7. Use of Information - Section 1B1.8

Pursuant to USSG § 1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining

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the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

8. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard

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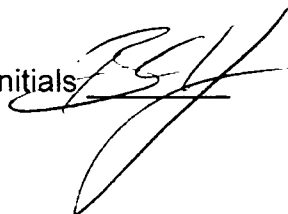


to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by rescission of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant its own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

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(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

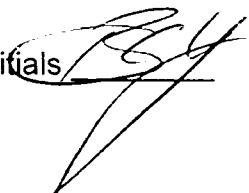
9. Mandatory Restitution to Victims of Offense of Conviction

Pursuant to 18 U.S.C. § 3663A(a), the defendant agrees to make full restitution to the victims of the offense, jointly and severally with other convicted co-conspirators.

10. Agreement Not to Engage in Any Business or Occupation Related to Real Estate Transactions

The defendant agrees that, during the pendency of this case and during any term of imprisonment or term of supervised release or probation, and as a condition of supervised release or probation, he will not engage, directly or indirectly, formally or informally, in any business, trade, or occupation related to deriving income through the buying, selling, or leasing of real property, or giving advice about the buying, selling, or leasing of real property, including acting as a buyer, a seller, a real estate agent, a leasing agent, a mortgage broker, a lender, an appraiser, an investor, or in any other capacity. This agreement is not intended to prohibit the defendant from participating in the buying, selling, or leasing of real estate on which he or members of his immediate family reside or will reside.

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11A. *OK A.K. BCW*

Surrender of Licenses Related to Real Estate Business or Occupation

The defendant agrees that, during the pendency of this case and during any term of imprisonment or term of supervised release or probation, and as a condition of supervised release or probation, he will surrender and will not apply for or seek to reinstate any and all licenses or other certificates that would authorize him to engage in any business, trade, or occupation that relates to the buying, selling, or leasing of real property, or giving advice about the buying, selling, or leasing of real property, including but not limited to the following licenses or certificates: Real Estate Broker, Real Estate Sales Associate, Mortgage Broker, Mortgage Lender, Certified Residential Appraiser, Certified General Appraiser, General Appraiser (Instructor), and similar licenses and certificates. The defendant agrees to surrender any such licenses and certificates that he currently holds no later than twenty days after he enters a plea of guilty in this case.

11B. *OK A.K. BCW*

Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include a money judgment in the amount of \$100,000.00, representing the amount of proceeds obtained as a result of Count One. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and,

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BCW

in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government and the defendant consents to the filing of a motion by the United States for immediate entry of a money judgment against the defendant. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the amount of the proceeds is \$100,000.00 and enter a Personal Money Judgment. Pursuant to Rule 32.2(b)(3), the defendant agrees that the Personal Money Judgment shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees that the United States shall, at its option, be entitled to forfeiture of any property (substitute assets) of the defendant up to the value of \$100,000.00 in order to satisfy the money judgment. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take whatever steps are necessary to pass clear title to the United States of any assets sought to satisfy the money judgment. These steps

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include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property which could be used to satisfy the money judgment and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

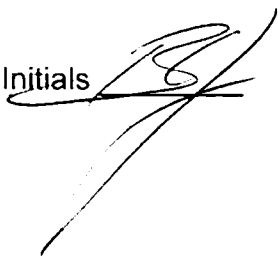
Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture. The defendant agrees that forfeiture and any payment of restitution shall not serve as an offset or credit against one or the other.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or

Defendant's Initials

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§ 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement,

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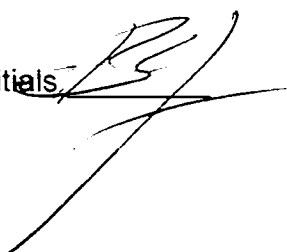


an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether

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or not such decision is consistent with the government's recommendations contained herein.

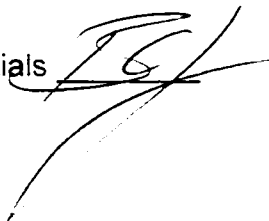
5. Defendant's Waiver of Right to Appeal and Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

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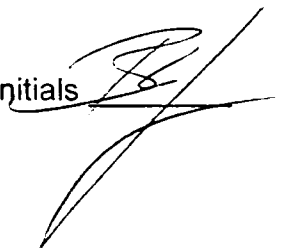
7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant

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pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth in the attached "Factual Basis," which is incorporated herein by reference, are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

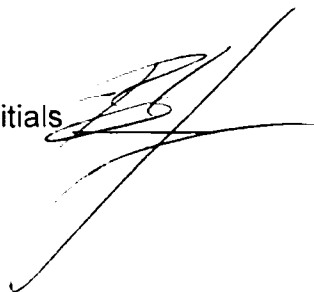
10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

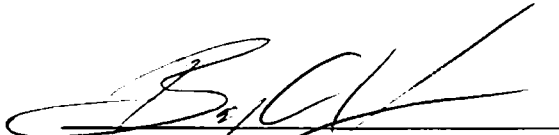
11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

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DATED this 16th ^{September} day of ~~August~~, 2009.



BARRY C. WESTERGOM
Defendant.



SCOTT KALISCH
Attorney for Defendant

A. BRIAN ALBRITTON
United States Attorney

By: 

ARNOLD B. CORSMEIER
Assistant United States Attorney



MAC D. HEAVENER, III
Assistant United States Attorney
Deputy Chief, Jacksonville Division

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:09-cr-286-J-25TEM

BARRY C. WESTERGOM

PERSONALIZATION OF ELEMENTS

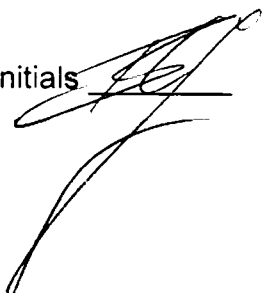
1. Do you admit that from in or about February, 2004, through in or about October, 2005, in Jacksonville, in the Middle District of Florida, and elsewhere, two or more persons came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the Information?

2. Do you admit that knowing the unlawful purpose of the plan, you willfully joined in it?

3. Do you admit that one of the conspirators, during the existence of the conspiracy, knowingly committed at least one of the methods, or "overt acts," described in the Information, such as the act listed in paragraph 2 of the Overt Acts section of the Information, in that some time in or about July or August, 2005, at Jacksonville, you sent a Purchase and Sale Agreement to a sellers' agent by facsimile transmission setting forth the terms of an offer by Juan Carlos Gonzalez to buy residential real estate property located at 8703 Harpers Glen Court in Jacksonville?

4. Do you admit that such "overt act" was knowingly committed in an effort to carry out or accomplish some object of the conspiracy?

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:09-cr- 286 -J- WESTEM

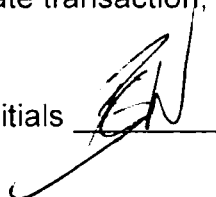
BARRY C. WESTERGOM

FACTUAL BASIS

Beginning at some unknown time but at the latest in or about February, 2004, co-conspirator Juan Carlos Gonzalez, and other persons in the Jacksonville, Florida, area, including the defendant, BARRY C. WESTERGOM, conspired to commit mortgage fraud. The scheme revolved around Gonzalez, or other individuals he enlisted, purchasing real estate properties at a particular price. For many of the properties, Gonzalez obtained fraudulent appraisals that found the properties to be worth significantly more than the agreed purchase price. WESTERGOM, who was a property appraiser licensed in the State of Florida, performed most of these appraisals. The homes were financed with mortgage loans that were obtained through the use of false and fraudulent documentation and information, including the fraudulently inflated appraisals, upon which federally insured financial institutions and other lenders relied to make the loans. The conspiracy continued until in or about October, 2005.

In fraudulently obtaining these loans, Gonzalez and his co-conspirators used various forms commonly used in real estate transactions. A Purchase and Sale Agreement is a written contract used in the sale of real estate and sets forth the terms of the real estate transaction, including identifying the property to be sold, the seller of

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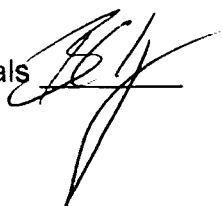


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the property, the buyer of the property, the purchase price, and other conditions of the sale. A Uniform Residential Loan Application, commonly referred to as a mortgage loan application or a Form 1003, is a universally used mortgage application developed by federal government agencies that is utilized by financial institutions in the mortgage loan approval process. The Form 1003 requires the borrower to submit his or her financial history, including employment information, monthly income, assets and liabilities, and the specific details of the residential real estate transaction. A HUD-1 Settlement Statement is a United States Department of Housing and Urban Development form that is universally used in closings of the sales of residential properties in the United States. A HUD-1 is used to identify and allocate the various expenses associated with the sale of residential real estate between the buyer and the seller of the property.

A property appraisal is an impartial analysis and evaluation conducted by a qualified appraiser according to established criteria to assess the current market value of a property. Among other methods of valuation, appraisers compare the subject property to nearby similar properties, making adjustments as necessary to reflect differences between the properties that add to or subtract from the value. Mortgage lenders rely upon appraisals to give them an objective assessment of the market value of a property, which they use to determine the amount of the loan that will be extended on a property. Because mortgage loans are secured by the property, lenders generally will not extend loans greater than the fair market value of the property

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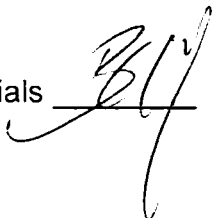
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to ensure that if the borrower defaults on the loan they can recover the proceeds of the loan through sale of the property by foreclosure.

To execute the scheme charged in the Information, Gonzalez negotiated the purchase of residential real estate properties, either on behalf of himself personally, on behalf of an entity he controlled, or on behalf of a third-party buyer. Gonzalez, the entity, or the buyer entered into a Purchase and Sale Agreement with the owners/sellers of the properties. For most of the properties, Gonzalez retained WESTERGOM and his company, JAX Appraisals, Inc., to provide a property appraisal that would be used to obtain a mortgage loan on the property. ^{ABC} ~~In each instance, Gonzalez provided WESTERGOM with a dollar amount that Gonzalez wanted the appraisal to reflect. This amount significantly exceeded the actual purchase price of the property.~~ WESTERGOM fraudulently appraised the property ^{an amount that significantly exceeded the purchase price ABC} ~~at the price that Gonzalez requested~~, using inappropriate comparable properties and otherwise departing from accepted standards of appraisal practice. WESTERGOM knew that Gonzalez intended to submit the appraisal to a lender to obtain a mortgage loan or loans whose total amount was at or near the inflated appraised value. Without the inflated appraisal, Gonzalez could not have obtained a loan that exceeded the actual price he agreed to pay for the property. For each appraisal he completed for Gonzalez, WESTERGOM received an appraisal fee.

In some of the transactions that were part of the scheme to defraud, WESTERGOM acted not only as the property appraiser but also as a real estate broker. For those transactions, WESTERGOM received not only an appraisal fee but

Defendant's Initials



also a percentage of the sales price as a broker's commission. WESTERGOM's acting as both an appraiser and a broker in the same transaction created a conflict of interest and WESTERGOM knew that his acting in both capacities in the same transaction was improper. Lenders were not informed that WESTERGOM was acting in both capacities in the same transaction, which was a material omission of fact.

When a property was being purchased by a third-party buyer but the Purchase and Sale Agreement was between the owners/sellers and Gonzalez or one of the entities he controlled, Gonzalez would create, or cause to be created, a second Purchase and Sale Agreement between the owners/sellers and the buyer at the higher, fraudulently inflated appraisal price. At Gonzalez's direction, the second Purchase and Sale Agreement listing the higher price was submitted to lenders in support of the buyers' applications for loans based upon the higher price. Lenders were not informed of the first Purchase and Sale Agreement at the lower price, which was a material omission of fact.

Also at Gonzalez's direction, false financial information pertaining to the buyers' income and assets, which was specifically designed to mislead financial institutions and other lenders, was submitted in support of the loan applications. For some properties, Gonzalez caused documents, such as bank statements, containing the false financial information to be altered or created for submission to lenders. On at least one occasion, WESTERGOM altered a bank statement for Gonzalez to reflect that the account contained much more money than was actually in the account. ~~When he altered the bank statement, WESTERGOM knew that Gonzalez intended to submit~~

DC
(S.H.)
P.W.

Defendant's Initials

BC

~~the document to a lender in support of a mortgage loan application. The purpose of providing false financial information to the lenders was to convince them to loan money on the properties in an amount sought by Gonzalez.~~

ICW
ESB
PL

The false financial information and the inflated appraisals were submitted to lenders so that the buyers could obtain mortgage loans in higher amounts than the lenders would have approved if the buyers submitted true financial information. Submission of this information was often accomplished by wire transmission, such as by facsimile transmission or electronic mail. The loan or loans that were obtained with the false financial information exceeded the actual purchase price of the property. The lender was not informed that the selling price listed in transaction documents was higher than the actual selling price negotiated with the owner/seller.

At or shortly before or after the closings for the sales of the properties, Gonzalez or an entity controlled by him would receive the difference between the loan amount and the actual purchase price, usually described with terms such as "assignment fee" or "payoff of second mortgage" or similar terms. The owners/sellers sometimes were told at the closing that the contract sales price listed in the HUD-1 Settlement Statement was higher than the actual price for which they sold the property because the buyers were required to pay an assignment fee or some other such costs that were added to the sales price. The conspirators' fraudulent acts caused lenders, including federally insured financial institutions, to disburse loan funds, sometimes by wire transfer, to the buyers for use at the closings.

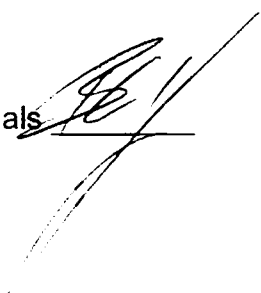
Defendant's Initials



One example of the execution of the scheme was the purchase by Gonzalez of a residence in Jacksonville located at 8703 Harpers Glen Court. In this transaction, WESTERGOM acted as a buyer's agent through an entity called Property Associates, which was controlled by WESTERGOM. In this capacity, WESTERGOM negotiated with the sellers' agent to purchase the property, which was listed for sale at \$510,000. WESTERGOM sent a Purchase and Sale Agreement to the sellers' agent by facsimile transmission setting forth the terms of an offer to buy the property. Subsequent negotiations between WESTERGOM and the sellers' agent resulted in an agreed purchase price of \$490,000. The contract sent by WESTERGOM stated that the purchaser was to be JCI and Associates, an entity controlled by Gonzalez, and the sellers were described as "owner of record." This contract was executed by Gonzalez and the sellers on August 8, 2005.

Some time after August 8, 2005, WESTERGOM conducted an appraisal of the property on behalf of Gonzalez. Gonzalez told WESTERGOM to appraise the property in the amount of \$625,000. WESTERGOM appraised the property and, using inappropriate comparable properties and otherwise deviating from accepted standards of appraisal practice, issued an appraisal report valuing the property at the \$625,000 figure requested by Gonzalez. WESTERGOM knew at the time that he completed the appraisal that the appraised value was significantly higher than the then current market value of the property. WESTERGOM also knew that Gonzalez intended to submit the appraisal report to lenders in support of a mortgage loan application.

Defendant's Initials

A handwritten signature or set of initials in black ink, appearing to be 'JCI' or similar, written over a horizontal line.

Gonzalez also directed a person to create fictitious Bank of America account statements for an account in his and his wife's names to reflect significantly larger cash balances than were actually in the account over a two-month period. For example, the true ending balance shown on the statement for the period from June 25, 2005, through July 25, 2005, which was \$92.58, was altered to reflect a balance of \$237,352.54, and other figures on the statement, such as the beginning balance and interest paid, were also altered to conform to this inflated ending balance figure.

To obtain a mortgage loan on the property, Gonzalez completed, or caused someone else to complete, two Uniform Residential Loan Applications, or Forms 1003, stating that the buyer of the Harpers Glen property was his wife, that the balance in the Bank of America account was the fraudulently inflated balance set forth in the altered statements, and that the purchase price of the property was \$625,000 when in fact the purchase price was \$490,000. Gonzalez provided the fictitious bank statements, fraudulent Forms 1003, and fraudulent appraisal report to a mortgage broker, who then submitted them to a lender, 4UDirect, Inc., doing business as Nations Home Lending Center, to obtain a first mortgage loan in the amount of \$437,500 and a second mortgage loan in the amount of \$125,000 for the Harpers Glen property. Based primarily on the false information set forth in these documents, 4UDirect approved the loans.

On October 6, 2005, a closing on the property was conducted by a title company in Jacksonville. A HUD-1 completed for use at the closing stated that Gonzalez's wife was the buyer and reflected a "contract sales price" of \$625,000, which

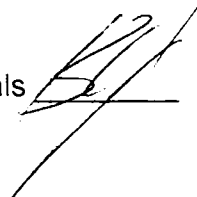
Defendant's Initials

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was not the true sales price of the property. Gonzalez directed his wife to sign the HUD-1 knowing that the sales price listed was not the true sales price. At the closing, a representative of the title company, acting as closing agent, told the sellers that the contract had been assigned to another person and that the difference between the actual sales price and the price listed on the HUD-1 represented an assignment fee. During the closing, the lender, 4UDirect, disbursed the loan funds obtained by Gonzalez for the purchase of the property. At or shortly after the closing, the title company, as closing agent, issued a check in the amount of \$134,000 to JCI and Associates, an entity controlled by Gonzalez. This amount was listed on the HUD-1 as an "Assignment of Contract Fee." The title company issued a check in the amount of \$12,250 to Property Associates, an entity controlled by WESTERGOM. This amount was listed on the HUD-1 as a "Sales/Broker's Commission." The title company also issued a check in the amount of \$550 to JAX Appraisals, Inc., an entity controlled by WESTERGOM. This amount was listed on the HUD-1 as an "Appraisal Fee."

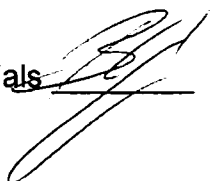
During the course of the conspiracy, WESTERGOM participated as an appraiser and/or a broker in transactions for the purchase and sale of numerous properties, which victimized more than ten individuals and entities, including third-party buyers, private mortgage lenders, and federally insured financial institutions. The fraudulent acts of the conspirators resulted in lenders extending millions of dollars in mortgage loans that would not have been approved but for the fraud. ~~For the purposes of calculation of the sentencing guidelines, the amount of the loss resulting from the conspiracy was more than \$2,500,000 but less than \$7,000,000. This loss was~~

M & J
4
the losses from the conspiracy were
S.K. MC

Defendant's Initials 

reasonably foreseeable in connection with the criminal activity that WESTERGOM agreed to undertake. As a licensed property appraiser, WESTERGOM abused a position of trust and used a special skill in a manner that significantly facilitated the commission and concealment of the offense. Over the course of the conspiracy, WESTERGOM obtained approximately \$100,000 in proceeds from appraisal fees and broker's commissions that were paid to him as a result of the offense.

Defendant's Initials

A handwritten signature or set of initials in black ink, appearing to be 'BJ' with a long horizontal stroke underneath.