

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-20398-CR-MIDDLEBROOKS

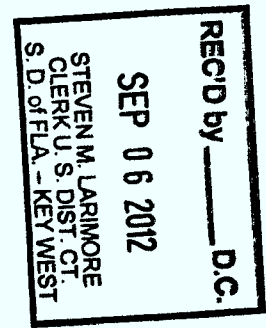
UNITED STATES OF AMERICA,

v.

ANDRES MENDEZ,
a/k/a "Andy Mendez, Sr.,"

Defendant.

_____ /



PLEA AGREEMENT

The United States of America and Andres Mendez (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count 1 of the Indictment in *United States v. Andres Mendez, a/k/a "Andy Mendez, Sr.,"* Case No. 12-20398-CR-MIDDLEBROOKS. Count 1 charges the defendant with conspiracy to commit mail fraud, in violation of Title 18, United States Code, Section 1349.

2. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline

range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of up to thirty (30) years for Count 1, followed by a term of supervised release of up to five (5) years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000 or double the gross proceeds and must order restitution. The defendant agrees that he will make restitution in an amount determined by the Court.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. In exchange for pleading guilty to the Indictment, and subject to the limitations and provisions set forth in this agreement, the Office of the United States Attorney for the Southern District of Florida (hereinafter "Office"), agrees not to further prosecute defendant for offenses arising out of the conduct described in paragraph 16 below. This agreement includes only the

conduct set forth in paragraph 16 below, and excludes Title 26 offenses, crimes of violence, any other conduct not set forth in paragraph 16 below, and any proceeding which may be pending at the time this agreement is signed. This agreement is also limited to the United States Attorney's Office for the Southern District of Florida and, as such, does not and cannot bind other federal, state, regulatory, or local prosecuting authorities. Furthermore, in exchange for pleading guilty to the Indictment, and subject to the limitations and provisions set forth in this agreement, including the condition that the defendant has fulfilled all of her obligations under this agreement up to the time of sentencing, the Office agrees to recommend a sentence at the low end of the advisory guideline range as calculated by the Probation Office.

6. The Office reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, the Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The United States agrees that it will recommend at sentencing that the court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of

her own misconduct by timely notifying authorities of her intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. The United States, however, will not be required to make these recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The Office and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed on the count to which the defendant shall plead:

- a. Applicable Guideline Offense and Base Offense Level: Pursuant to Section 2B1.1 of the Sentencing Guidelines, the offense guideline applicable to the defendant's offense is Section 2B1.1(a)(1)(B), which provides for a base offense level of seven (7) because the defendant will plead guilty to conspiracy to commit mail fraud (involving a financial institution), which carries a maximum term of imprisonment of thirty (30) years.
- b. Specific Offense Characteristics: The parties agree and stipulate that the following offense characteristics apply under Section 2B1.1(b):
 - (i) Loss - the amount of loss suffered that is attributable to defendant is more than \$2.5 million but not more than \$7 million.

- c. Role in the Offense: The parties agree and stipulate that the defendant should receive a two level enhancement as an organizer and leader in the charged criminal activity pursuant to Section 3B1.1(c).

9. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw her plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

10. The defendant agrees that he shall cooperate fully with this Office by, among other things: (a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding; (b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office; and (c) if requested by this Office, working in an undercover role under the supervision of, and in compliance with, law enforcement officers and agents.

11. The Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If in the *sole and unreviewable judgment* of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the court's downward departure from *the advisory sentence* calculated under the Sentencing Guidelines, this Office may at or before sentencing make a motion consistent with the intent of Section 5K1.1 of the Sentencing Guidelines prior to sentencing, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending that the defendant's sentence be reduced from the advisory sentence suggested by the Sentencing Guidelines. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file any such motion(s) and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding insofar as the appropriateness of this Office's filing of any such motion is concerned.

12. The defendant understands and acknowledges that the Court is under no obligation to grant the motion(s) referred to in this agreement should the government exercise its discretion to file any such motion. The defendant also understands and acknowledges that the court is under no obligation to reduce the defendant's sentence because of the defendant's cooperation.

13. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, and in exchange for the undertakings made by this Office in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742 to appeal the conviction,

any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect this Office's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if this Office appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with this Office, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the conviction or sentence to be imposed in this case was knowing and voluntary.

14. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charges identified in paragraph one (1) above or otherwise fails to fully comply with any of the terms of this plea agreement, this Office will be released from its obligations under this agreement, and the defendant agrees and understands that: (a) the defendant thereby waives any protection afforded by any proffer letter agreements between the parties, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by the defendant as part of plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against the defendant without any limitation in any civil or criminal proceeding brought by the government; (b) the defendant's waiver of any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information, referred to herein, shall remain in full force and effect; and (c) the

defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or the defendant's representatives to any state or federal agency and/or this Office.

15. The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status, if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, and, in some cases, removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including the defendant's attorney or the district court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. Defendant nevertheless affirms the desire to plead guilty regardless of any immigration consequences that the plea may entail, even if the consequence is automatic removal from the United States.

16. The defendant hereby (i) confirms that he has reviewed the following facts with legal counsel, (ii) adopts the following factual summary as his own statement, (iii) agrees that the following facts are true and correct, and (iv) stipulates that the following facts provide a sufficient factual basis for the plea of guilty in this case, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure:

Along with others, Andres Mendez Sr. ("defendant") agreed to participate in a scheme to defraud certain lending institutions, in exchange for undocumented kickbacks paid to defendant. Specifically, defendant attended a meeting of others, including J.R. and J.R.M., at the Macaroni Grill in Miami-Dade County, Florida, and recruited them to participate in a scheme to defraud lending institutions by purchasing luxury condominiums at the Jade Apartments, 1331 Brickell Bay Drive, Miami, Florida, 33131 ("Jade Apartments"). Defendant and his conspirators submitted false and

fraudulent paperwork to such lending institutions, to make it appear that these straw buyers qualified for large loans when in truth and in fact such buyers did not qualify. It was also part of the scheme that the lenders would be misled as to the true purchase price of the condominiums so that the lenders would believe that the purchase price upon which a loan was based, was significantly higher than the true purchase price paid to the seller. Defendant and his conspirators, including L.C-D., caused false and fraudulent documents, such as HUD-1 documents with false sales price figures, to be executed in order to accomplish this aspect of the conspiracy.

As a further part of the scheme, defendant offered to pay, and paid, undocumented kickbacks to other participants in order to obtain their participation, and so that defendant could himself receive substantial illicit proceeds. For example, defendant gained the participation of his son, A.M.JR. in the scheme, and in exchange for A.M.JR.'s role of fraudulently executing documents, defendant caused another conspirator, J.S., to make undisclosed kickbacks to a shell company that A.M.JR. controlled. Defendant also paid undocumented kickbacks to conspirator C.M. to obtain her assistance with creating false and fraudulent paperwork, and to assist with concealing the scheme from others. Defendant also instructed other participants to use or form a shell company to receive their kickbacks so as to avoid detection.

To further execute the scheme, defendant used a shell company, All Star Marketing, Inc. ("All Star"), that defendant controlled, to conceal his receipt of kickbacks and allow him to make kickbacks to others. Defendant received undisclosed or disguised kickbacks in relation to three transactions involving luxury condominiums at the Jade Apartments. These kickbacks were paid to All Star in amounts for Jade Units 3609, 3003, and 803, as follows: \$237,015.26 on November 30, 2005; \$250,000 on January 25, 2006; and \$230,000 on February 22, 2006.

As further part of the scheme, defendant participated with others, including C.M. and J.S., to falsify paperwork and to make it appear that various straw buyers had substantially more assets and income than was actually the case. Defendant was aware when various false and fraudulent documents were executed by other conspirators, and knew that the false and fraudulent documents were submitted to certain lending institutions and others using the mails and private interstate commercial carriers as part of the scheme.



Defendant further discussed with conspirator B.G., who became the straw owner of Jade Unit 803 as part of the scheme, that B.G. could rent out the unit and obtain additional illicit proceeds in this fashion. Defendant assisted B.G. with renting Jade Unit 803, and was aware that it was subsequently rented to obtain more proceeds. Defendant stipulates that B.G. received a deposit of rent proceeds for Jade Unit 803 into a bank account on or about July 9, 2007, as part of the scheme.

Defendant participated at two voluntary meetings with law enforcement officials, one in 2011 and one in 2012. Defendant was asked about his activities with regard to the Jade Apartments, and defendant made false and misleading statements at these meetings in order to prevent detection of the scheme and his role in the scheme. Defendant specifically made a false and misleading statement concerning payment of a kickback to straw buyer B.G., to obtain B.G.'s participation in the scheme.¹

17. The defendant hereby knowingly and voluntarily waives any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information against the defendant with respect to any criminal offenses in connection with the defendant's criminal conduct as charged in the Indictment.

18. This Office represents that the undersigned prosecutor is unaware of any information establishing the factual innocence of the defendant in the offense referred to in paragraph one (1) of this agreement. This Office understands it has a continuing duty to provide such information establishing factual innocence of the defendant. The defendant understands that if this case

¹ I, Andy Mendez, after having completed plea negotiations and having reached a plea agreement with the United States, hereby affirm that I understand the foregoing and voluntarily and knowingly adopt the Factual Basis set forth in paragraph 16 as my own statement. This statement is intended to be a post-plea discussion statement and is not protected by Criminal Procedure Rule 11(e)(6) or Federal Rule of Evidence 410. No promises or inducements have been made to me other than those contained in this agreement. I am satisfied with the representation of my attorney in this matter.

Defendant  and Defense Counsel 

proceeded to trial, this Office would be required to provide impeachment information relating to any informants or other witnesses. In addition, if the defendant raised an affirmative defense, this Office would be required to provide information in its possession that supports such a defense. Further, if this case proceeded to trial, this Office would be required to provide other information and materials in accordance with Fed. R. Crim. P. 16 and the Southern District of Florida's Standing Discovery Order. In return for the Government's promises set forth in this agreement, the defendant waives the right to receive in discovery any such information and materials other than information and materials establishing the factual innocence of the defendant, and agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of such information and materials other than information and materials establishing the factual innocence of the defendant.

19. This Office agrees that it will not seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement, except that this Office shall have the right in its discretion to seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement where any such additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level would be based on conduct occurring after the defendant enters into this agreement. The defendant agrees that he will be sentenced under the Sentencing Guidelines and will not seek additional downward specific offense characteristics, reductions, variances, or downward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement. The defendant therefore specifically agrees to be bound by the calculation of offense characteristics as set forth in the plea agreement and may not

argue for a sentencing variance below the guideline level as calculated in this plea agreement. However, in the event the probation office recommends any specific offense characteristics, enhancements, reductions, or departures to or from the defendant's offense level other than those, if any, specifically referred to in this agreement, either party shall have the right but not the obligation to oppose any such recommendation.

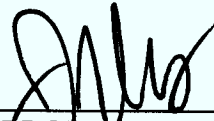
20. As part of this plea agreement, and as a condition of the United States agreeing to be bound by the terms of the agreement, the defendant agrees to identify, turn over, and forfeit to the United States all of his right, title, and interest, in his individual, corporate, partnership, or any other capacity, all real or personal property, tangible or intangible, within his possession, custody, exercise, or control, as proceeds or as derived from proceeds of the criminal conduct charged in Count 1 of the Indictment, or as substitute assets of those assets that have either been previously sold, transferred, dissipated, or diminished in value, or commingled with other property that cannot be divided without difficulty, valued in an amount not to exceed \$5,677,500, including, but not limited to, all divided or undivided interest he has anywhere in the world, in: (1) any and all financial accounts, including, but not limited to, bank accounts, brokerage accounts, prepaid life insurance, retirement accounts, annuities, certificates of deposit, and money-market accounts; (2) corporate, partnership, or other business interests; (3) commercial and residential real property, (4) shares of transferrable stocks and bonds that the defendant may legally claim, or over which he may exercise control; (5) his ownership, financial, and legal interests in two Cici's Pizza franchises located in Miami-Dade, County, Florida, including all proceeds, revenue or earnings to which he is entitled from the date of this agreement; and (6) personal property, including jewelry, valuable artwork, and antiques individually valued by independent appraisers at \$1,000.00 or more. As part of this

agreement, the defendant shall provide in writing, with documentation concerning current values and his ownership interest in, a complete list of all such properties, as defined in this paragraph, and shall attest under penalty of perjury that the list is true and correct, within fourteen (14) days of his execution of this agreement. As further part of this agreement, the defendant agrees to execute all documents requested of him by the United States, its agents, and representatives in order to effectuate the forfeiture of his interests in said properties to the United States and to defend the United States' interests in those properties against any third parties who may try to assert an interest in those properties. Additionally, the defendant agrees that, within thirty (30) days of executing this agreement, he will physically turn over to the United States all personal property described above. Defendant's failure to provide a full, complete and accurate accounting to the United States as set forth in this paragraph, or failure to assist the United States to timely fulfill his obligations under this paragraph, including to identify and transfer assets or property, shall relieve the United States of its obligations as set forth in this plea agreement, including with regard to any position as to sentencing.

21. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.


WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 9/6/12

By: 

JERROB DUFFY
ASSISTANT UNITED STATES ATTORNEY

Date: 8/30/12

By: 

BRUCE H. LEHR, ESQ.
ATTORNEY FOR DEFENDANT

Date: 8/30/12

By: 

ANDRES MENDEZ
DEFENDANT