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7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) CASE NO.: 1:10-cr-00249 AWI
11)
Plaintiff,) MEMORANDUM OF PLEA AGREEMENT
12) PURSUANT TO RULE 11(c) OF THE
v.) FEDERAL RULES OF CRIMINAL
13) PROCEDURE
PATRICIA ANN KING,)
14)
Defendant.)
15

16 Pursuant to Rule 11(c) of the Federal Rules of Criminal
17 Procedure, the United States of America, by and through Benjamin B.
18 Wagner, the United States Attorney for the Eastern District of
19 California, and Assistant United States Attorneys Kirk E. Sherriff
20 and Henry Z. Carbajal, and defendant PATRICIA ANN KING and her
21 attorney, Robert D. Wilkinson, have agreed as follows:

22 1. Scope of Agreement

23 This document contains the complete Memorandum of Plea Agreement
24 ("Plea Agreement") between the United States Attorney's Office for
25 the Eastern District of California ("Government") and defendant
26 PATRICIA ANN KING regarding this case. This Plea Agreement is
27 limited to the United States Attorney's Office for the Eastern
28 District of California and cannot bind any other federal, state, or

1 local prosecuting, administrative, or regulatory authorities.

2 2. Charges

3 Defendant PATRICIA ANN KING acknowledges that she has been
4 charged in the Superseding Indictment with thirteen counts, as
5 follows:

6 COUNT 1: Conspiracy to Commit Mail Fraud, Wire Fraud,
7 and Bank Fraud, in violation of Title 18,
8 United States Code, Section 1349; and

9 COUNTS 5-9,
10 11-15, and
11 18-19: Mail Fraud, in violation of Title 18, United
12 States Code, Section 1341.

13 3. Nature, Elements and Possible Defenses

14 The defendant has read the charges against her contained in the
15 Superseding Indictment, and those charges have been fully explained
16 to her by her attorney. Further, the defendant fully understands the
17 nature and elements of the crimes in the Superseding Indictment to
18 which she is pleading guilty, together with the possible defenses
19 thereto, and has discussed them with her attorney.

20 The elements of the crime of Mail Fraud are:

21 First, the defendant knowingly participated in, devised, or
22 intended to devise a scheme to defraud or plan for
23 obtaining money or property by false or fraudulent
24 pretenses, representations, or promises;

25 Second, the statements made or facts omitted as part of the
26 scheme were material; that is, they had a natural
27 tendency to influence, or were capable of influencing,
28 a person to part with money or property;

29 Third, the defendant acted with the intent to defraud; that
30 is, the intent to deceive or cheat; and

31 Fourth, the defendant used, or caused to be used, the mails or
32 any private or commercial interstate carrier to carry
33 out or attempt to carry out an essential part of the
34 scheme.

1 4. Agreements by the Defendant

2 (a) The defendant agrees that this Plea Agreement shall be
3 filed with the court and become a part of the record of the case.

4 (b) The defendant agrees to enter a plea of guilty to Counts 7
5 through 9 of the Superseding Indictment, which charge defendant with
6 Mail Fraud, in violation of Title 18, United States Code,
7 Section 1341.

8 (c) The defendant understands and agrees that she will not be
9 allowed to withdraw her plea should the Court fail to follow the
10 Government's sentencing recommendations.

11 (d) The Defendant further acknowledges that her plea of guilty
12 is voluntary and that no force, threats, promises or representations
13 have been made to anybody, nor agreement reached, other than those
14 set forth expressly in this Plea Agreement, to induce the defendant
15 to plead guilty.

16 (e) The defendant agrees that her base offense level for Mail
17 Fraud is seven (7) pursuant to Section 2B1.1(a)(1) of the 2011 United
18 States Sentencing Commission Guidelines Manual ("Sentencing
19 Guidelines"), plus fourteen (14) levels for loss more than \$400,000
20 but not greater than \$1,000,000 (§ 2B1.1(b)(1)(H)).

21 (f) The defendant agrees that she will be sentenced at the same
22 time both in this case and in United States v. Patricia Ann King,
23 No. 1:10-cr-0151 AWI. The defendant agrees that a two (2) level
24 increase will apply when determining her combined offense level under
25 Section 3D1.4 of the Sentencing Guidelines.

26 (g) The defendant knowingly and voluntarily waives her
27 Constitutional and statutory rights to appeal her plea, conviction,
28 and sentence, including any orders of restitution and/or forfeiture.

1 This waiver of appeal includes, but is not limited to, an express
2 waiver of the defendant's right to appeal her plea, conviction, and
3 sentence on any ground, including any appeal right conferred by 18
4 U.S.C. § 3742, and the defendant further agrees not to contest her
5 plea, conviction and sentence in any post-conviction proceeding,
6 including but not limited to a proceeding under 28 U.S.C. § 2255.

7 (h) Except as otherwise agreed by the parties herein, the
8 defendant agrees not to move for any downward adjustments in her
9 offense levels under either Chapters Two or Three of the Sentencing
10 Guidelines, and also agrees not to move for a downward departure of
11 her sentence whether under the Sentencing Guidelines or the factors
12 of 18 U.S.C. § 3553. The defendant understands and agrees that this
13 agreement by her includes, without limitation, not moving for a
14 downward departure of her offense level, criminal history category,
15 or criminal history points as defined by the Sentencing Guidelines.
16 Additionally, the defendant agrees that the application of the
17 Sentencing Guidelines to her case results in a reasonable sentence
18 and that the defendant will not request that the court apply the
19 sentencing factors under Section 3553 of Title 18, United States
20 Code, to arrive at a sentence different than that called for under
21 the Sentencing Guidelines. The defendant acknowledges that, if the
22 defendant requests or suggests in any manner a different sentence
23 than what is called for under the Sentencing Guidelines, the
24 government, at its sole discretion, may withdraw from this plea
25 agreement and continue with its prosecution of the defendant as if
26 the parties had not entered into this Plea Agreement.

27 (i) The defendant agrees the conduct to which she is pleading
28 requires mandatory joint and several restitution in the amount of

1 \$530,300 pursuant to Section 3663A(c)(1)(A)(ii) of Title 18, United
2 States Code, and agrees to pay the full amount of restitution as
3 ordered by the Court to all victims affected by this offense.
4 Defendant further agrees that she will not seek to discharge any
5 restitution obligation, or any part of such obligation, in any
6 bankruptcy proceeding. The defendant agrees that the restitution
7 order is not restricted to the amounts alleged in the specific counts
8 to which she is pleading guilty, and that the Court can order the
9 payment of restitution for the full loss caused by the defendant's
10 wrongful conduct.

11 (j) The defendant understands that the Court must consult the
12 Federal Sentencing Guidelines (as promulgated by the Sentencing
13 Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C.
14 §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United
15 States v. Booker and United States v. Fanfan, 543 U.S. 220, 125
16 S. Ct. 738 (2005)), and must take them into account when determining
17 a final sentence. The defendant understands that the Court will
18 determine a non-binding and advisory guideline sentencing range for
19 this case pursuant to the Sentencing Guidelines. The defendant
20 further understands that the Court will consider whether there is a
21 basis for departure from the guideline sentencing range (either above
22 or below the guideline sentencing range) because there exists an
23 aggravating or mitigating circumstance of a kind, or to a degree, not
24 adequately taken into consideration by the Sentencing Commission in
25 formulating the Guidelines. The defendant further understands that
26 the Court, after consultation and consideration of the Sentencing
27 Guidelines, must impose a sentence that is reasonable in light of the
28 factors set forth in 18 U.S.C. § 3553(a).

1 (k) Defendant agrees to waive all rights under the "Hyde
2 Amendment," Pub. L. No. 105-109, § 617, 111 Stat. 2519 (1997), to
3 recover attorneys' fees or other litigation expenses in connection
4 with the investigation and prosecution of all charges in the above-
5 captioned matter and of any related allegations (including without
6 limitation any charges to be dismissed pursuant to this Plea
7 Agreement and any charges previously dismissed).

8 5. Agreements by the Government

9 (a) The Government will recommend a two-level reduction (if the
10 offense level is less than 16) or a three-level reduction (if the
11 offense level reaches 16) in the computation of the defendant's
12 offense level if the defendant clearly demonstrates acceptance of
13 responsibility for her conduct as defined in Section 3E1.1 of the
14 Sentencing Guidelines.

15 (b) The United States agrees that if defendant's guideline
16 range, after any adjustments, falls within Zone B, C, or D of the
17 Sentencing Table, the Government will recommend that the defendant be
18 sentenced to imprisonment for the low end of the applicable guideline
19 range, and to a three (3) year term of supervised release.

20 (c) The Government agrees that the defendant's base offense
21 level for Mail Fraud is seven (7) pursuant to Section 2B1.1(a)(1) of
22 the Sentencing Guidelines, plus fourteen (14) levels for loss more
23 than \$400,000 but not greater than \$1,000,000 (§ 2B1.1(b)(1)(H)).

24 (d) The Government agrees that in this case defendant King did
25 not use sophisticated means as defined at Section 2B1.1(b)(10) of the
26 Sentencing Guidelines. The Government further agrees that in this
27 case defendant King's conduct did not constitute abuse of a position
28 of trust or use of a special skill under Section 3B1.3 of the

1 Sentencing Guidelines.

2 (e) The Government agrees that defendant will be sentenced at
3 the same time both in this case and in United States v. Patricia Ann
4 King, No. 1:10-cr-0151 AWI. The Government agrees that a two (2)
5 level increase will apply when determining the defendant's combined
6 offense level under Section 3D1.4 of the Sentencing Guidelines.

7 (f) The Government agrees that the restitution amount, which is
8 joint and several with the co-defendants, for the conduct to which
9 defendant is pleading herein is \$530,300, under 18 U.S.C.
10 § 3663A(c)(1)(A)(ii).

11 (g) The United States agrees to dismiss the remaining counts of
12 the Superseding Indictment as to defendant King at the time of
13 sentencing, consisting of Counts 1, 5-6, 11-15, and 18-19.

14 (h) The defendant acknowledges and understands that the
15 Government makes no other representations to her regarding
16 sentencing, including regarding fines, her criminal history or
17 criminal history points under Chapter Four of the Sentencing
18 Guidelines, or the restitution amount owed by the defendant. The
19 defendant understands that the Government is free to comment and to
20 make recommendations to the Court and the Probation Office regarding
21 all sentencing matters other than as set forth in paragraphs (a)
22 through (g) above.

23 6. Factual Basis

24 The defendant will plead guilty because she is in fact guilty of
25 the crimes set forth at counts 7 through 9 of the Superseding
26 Indictment. The defendant also agrees that the following are the
27 facts of this case, although she acknowledges that, as to other

28 ///

1 facts, the parties may disagree:

2 From approximately October 2005 to approximately July 2006,
3 in the State and Eastern District of California, the
4 defendant assisted co-defendants Eric Ray Hernandez, Monica
5 Marie Hernandez, Evelyn Brigget Sanchez, and Darling
6 Arlette Montalvo in the execution of a scheme and artifice
7 "Lenders") of money and property, and caused money and
8 property to be obtained from such Lenders, including but
9 not limited to WMC Mortgage Corp. and SunTrust Mortgage,
10 Inc., by means of materially false and fraudulent
11 pretenses, representations, and promises. During this time
12 period, the defendant was a tax return preparer and owned
13 The Tax Kings, a tax return business located in
14 Bakersfield, California.

15 During this time period, at the direction of Eric
16 Hernandez, Monica Hernandez, Evelyn Sanchez, and Darling
17 Montalvo, the defendant prepared and provided to the co-
18 defendants false and misleading verification letters that
19 purported to verify loan applicants' self-employment
20 history and income, among other information. The defendant
21 knew that the false verification letters were to be
22 submitted to Lenders in support of applications for loans
23 to be used to purchase or refinance real properties. At
24 the time the defendant provided these verification letters,
25 the defendant and co-defendants Eric Hernandez, Monica
26 Hernandez, Evelyn Sanchez, and Darling Montalvo knew that
27 the verification letters contained materially false and
28 misleading information, and knew and expected that the
Lenders would reasonably rely on the misstatements and
omissions in the letters in approving the funding of loans
for the purchase or refinancing of real properties. The
defendant received compensation payments for providing the
verification letters.

19 In and around November 2005, the defendant provided the co-
20 defendants with a false verification letter in support of
21 applications by Darling Montalvo to WMC Mortgage for
22 residential loans to refinance 1501 Galina Court,
23 Bakersfield, CA. Among other false statements in the
24 verification letter, the defendant falsely verified that
25 she had prepared Montalvo's taxes for the previous five
26 years, that Montalvo had received self-employment income
27 for the previous five years from "business operations," and
28 that such purported income supported Montalvo's living and
personal expenditures. The defendant also falsely claimed
that the defendant was a CPA. At the time the letter was
provided to WMC Mortgage, Montalvo, King, and the other
defendants knew that the information in the letter was
materially false. Additionally, when WMC Mortgage
subsequently contacted the defendant in a pre-funding
audit, the defendant verified the letter that she had
submitted. WMC Mortgage ultimately funded loans in the
approximate amounts of \$232,000 and \$58,000 by wire

1 transfer for Montalvo's refinancing of 1501 Galina Court.
2 This property subsequently went into foreclosure when
Montalvo failed to make the loan payments when due.

3 In and around June 2006, a false verification letter was
4 presented to SunTrust Mortgage in support of applications
by J.E. to SunTrust Mortgage for residential loans to
5 finance the purchase of 12502 Reina Road, Bakersfield, CA.
Among other false statements in the verification letter, it
6 was falsely stated that the defendant was a CPA, that she
had prepared and filed J.E.'s tax returns for the previous
7 three years, and that J.E. had received self-employment
income for the previous three years from a pool service
8 company. On or about July 6, 2006, the defendant submitted
a letter confirming that she had signed the earlier letter
9 and had mistakenly identified herself as a CPA. The
defendant knew, at the time she submitted the July 6, 2006
10 letter to SunTrust Mortgage, that the information in the
June 2006 letter was materially false. SunTrust Mortgage
ultimately funded loans in the approximate amounts of
11 \$628,800 and \$150,000 by wire transfer for the purchase by
J.E. of the 12502 Reina Road property. This property
12 subsequently went into foreclosure when the loan payments
were not made when due.

13
14 In furtherance of the scheme and artifice to defraud, and
to obtain monies through false and fraudulent pretenses, on
15 and about the dates set forth below the defendant caused
the following items to be placed in a post office or an
16 authorized depository for mail matter, or with a private or
commercial interstate carrier, to be sent and delivered by
17 the United States Postal Service or such carrier, and
knowingly caused such items to be delivered by mail or
carrier:

18
19 Count 7: Deed of Trust, Doc. # 0205344753, securing WMC
Mortgage's loan in the amount of \$232,000 for the
20 refinance of the real property at 1501 Galina
Ct., Bakersfield, CA, mailed by the Kern County
Recorder's Office to WMC Mortgage on and about
21 December 14, 2005.

22
23 Count 8: Deed of Trust, Doc. # 0205344754, securing WMC
Mortgage's loan in the amount of \$58,000 for the
24 refinance of the real property at 1501 Galina
Ct., Bakersfield, CA, mailed by the Kern County
Recorder's Office to WMC Mortgage on and about
25 December 14, 2005.

26
27 Count 9: Federal Express package (tracking #792463930838)
regarding 1501 Galina Ct., Bakersfield, CA, sent from
Stewart Title in Bakersfield, CA to Washington Mutual
28 in Milwaukee, WI, on and about December 14, 2005.

1 At all relevant times herein, in carrying out these
2 actions, the defendant acted with the intent to defraud.
3 Through these actions, the defendant caused Lenders to be
4 defrauded of approximately \$530,300.

5 7. Potential Sentence

6 The following is the maximum potential sentence which the
7 defendant faces on each count:

8 (a) Imprisonment.

9 Maximum: Twenty (20) years.

10 (b) Fine.

11 Maximum: Two Hundred and Fifty Thousand Dollars
12 (\$250,000.00).

13 (c) Both such fine and imprisonment.

14 (d) Restitution- Mandatory

15 (e) Term of Supervised Release:

16 Maximum: Three (3) years.

17 (Should the defendant violate any of the terms of her
18 supervised release, she can be returned to prison for
19 the period of supervised release actually imposed by
20 the Court or two (2) years, whichever is less.)

21 (f) Penalty Assessment.

22 Mandatory: One Hundred Dollars (\$100.00).

23 8. Waiver of Rights

24 The defendant understands that by pleading guilty she surrenders
25 certain rights, including the following:

26 (a) The defendant is giving up her right to plead not guilty
27 and to persist in that plea. If the defendant persisted in a plea of
28 not guilty to the charges against her, she would have the right to be
represented by an attorney at all stages of the proceedings, and
would have a right to a public and speedy trial. The trial could be
either a jury trial or a trial by a judge sitting without a jury.

1 The defendant has a right to a jury trial. However, in order that
2 the trial be conducted by the judge sitting without a jury, the
3 defendant, the Government and the judge all must agree that the trial
4 be conducted by the judge without a jury.

5 (b) If the trial were a jury trial, the jury would be composed
6 of twelve lay persons selected at random. The defendant and her
7 attorney would have a say in who the jurors would be, by removing
8 prospective jurors for cause where actual bias or other
9 disqualification is shown, or without cause by exercising peremptory
10 challenges. The jury would have to agree unanimously before it could
11 return a verdict of either guilty or not guilty. The jury would be
12 instructed that the defendant is presumed innocent and that it could
13 not convict her unless, after hearing all the evidence, it was
14 persuaded of her guilt beyond a reasonable doubt.

15 (c) If the trial were held before a judge without a jury, the
16 judge would find the facts and determine, after hearing all the
17 evidence, whether or not he was persuaded of the defendant's guilt
18 beyond a reasonable doubt.

19 (d) At a trial, whether by a jury or a judge, the Government
20 would be required to present its witnesses and other evidence against
21 the defendant. The defendant would be able to confront those
22 Government witnesses and her attorney would be able to cross-examine
23 them. In turn, the defendant could present witnesses and other
24 evidence on her own behalf. If the witnesses for the defendant would
25 not appear voluntarily, she could require their attendance through
26 the subpoena power of the Court. At trial, the defendant would also
27 have the right to assistance of legal counsel. If she could not
28 afford legal counsel, one would be appointed for her by the court at

1 no expense to her.

2 (e) At a trial, the defendant would have a privilege against
3 self-incrimination so that she could decline to testify,
4 and no inference of guilt could be drawn from this refusal to
5 testify.

6 (f) If the defendant ever attempts to vacate her plea, dismiss
7 the underlying charges, or reduce or set aside her sentence on any
8 counts to which she is pleading guilty, the Government shall have the
9 right (1) to prosecute defendant on any and all counts to which she
10 pleaded guilty, and (2) to file any new charges that would otherwise
11 be barred by this Plea Agreement. The decision to pursue any or all
12 of these options is solely in the discretion of the Government. By
13 signing this Plea Agreement, the defendant agrees to waive any
14 objections, motions, and defenses she might have to the Government's
15 decision. Defendant specifically agrees not to raise any objections
16 based on the passage of time with respect to such counts including,
17 but not limited to, any statutes of limitation or any objections
18 based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
19 Amendment.

20 The defendant understands that by pleading guilty she is waiving
21 all of the rights set forth above, and acknowledges that her attorney
22 has explained to her those rights and the consequences of her waiver
23 of those rights.

24 9. Right to Counsel

25 The defendant understands that she has a right to counsel
26 throughout her case from her initial appearance through her trial or
27 guilty plea, or any dismissal of the case against her, and through
28 and including any sentencing. If not for the waiver of appeal rights

1 in this Plea Agreement, the defendant would also have a right to
2 counsel on a direct appeal in her case. The defendant understands
3 that the right to counsel includes the provision of defense counsel
4 through the Court if the defendant cannot afford to hire counsel.

5 10. Questions by Court

6 The defendant understands that if the court questions her under
7 oath, on the record, and in the presence of counsel about the offense
8 to which she has pleaded guilty, her answers, if false, may later be
9 used against her in a prosecution for perjury.

10 11. Entire Plea Agreement

11 (a) Other than this Plea Agreement, no agreement,
12 understanding, promise, or condition exists between the United States
13 and defendant. Nor will any such agreement, understanding, promise,
14 or condition exist unless it is committed to writing and signed by
15 the defendant, counsel for the defendant, and counsel for the
16 Government.

17 (b) This plea of guilty is freely and voluntarily made and is
18 not the result of force or threats, or of any promises apart from
19 those specifically set forth in this Plea Agreement. There have been
20 no representations or promises from anyone as to what sentence the
21 Court will impose.

22 12. Court not a Party

23 (a) It is understood by the parties that the Sentencing Court
24 is neither a party to nor bound by this agreement. Sentencing is a
25 matter solely within the discretion of the Court. The Court is under
26 no obligation to accept any recommendations made by the Government,
27 and the Court may in its discretion impose any sentence it deems
28 appropriate up to and including the statutory maximum set forth in

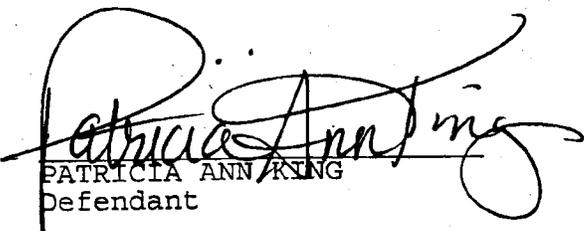
1 Section 7 above.

2 (b) In making its sentencing decision, the Court may take into
3 consideration any and all facts and circumstances concerning the
4 defendant's criminal activities, including activities which may not
5 have been charged in the Indictment. If the Court should impose any
6 sentence up to the statutory maximum, the defendant understands that
7 she cannot for that reason withdraw her guilty plea, and she will
8 remain bound to fulfill all of the obligations under this Plea
9 Agreement. The defendant understands that neither the prosecutor,
10 defense counsel, nor the Court can make or have made any promise
11 regarding the sentence the defendant will receive.

12 13. Presentence Report

13 The defendant understands that the United States Probation
14 Office is not a party to this agreement and will conduct an
15 independent investigation of the defendant's activities and her
16 background. It will then prepare a presentence report which it will
17 submit to the Court as its independent sentencing recommendation. In
18 addition, the Government will fully apprise the Probation Office, as
19 well as the Court, of the full and true nature, scope and extent of
20 the defendant's criminal activities, including information on her
21 background and criminal history.

22
23 Dated: 01/08/12


PATRICIA ANN KING
Defendant

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26
27 Dated: 01/08/12

/s/ ROBERT D. WILKINSON
ROBERT D. WILKINSON
Attorney for Defendant
PATRICIA ANN KING

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Dated: Jan. 12, 2011

BENJAMIN B. WAGNER
United States Attorney

By: /s/ Kirk E. Sherriff
KIRK E. SHERRIFF
HENRY Z. CARBAJAL
Assistant U.S. Attorneys