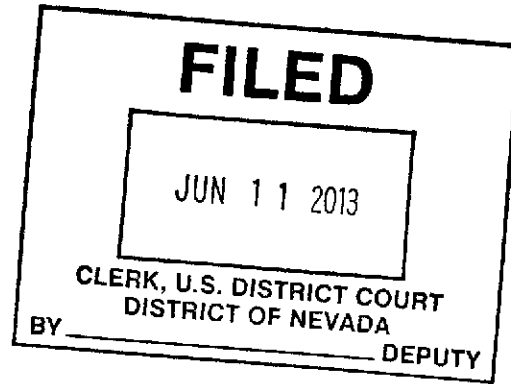


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 U.S. Department of Justice

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

11 -oOo-

12

13 UNITED STATES OF AMERICA,  
 14 Plaintiff,  
 15 vs  
 16 EARL GROSS,  
 17 Defendant.

2:12-cr-66-APG-CWH

**PLEA AGREEMENT UNDER  
 FED. R. CRIM. P. 11 (c)(1)(A) and (B)**

18

19 Plaintiff United States of America, by and through Daniel G. Bogden, United States  
 20 Attorney, Denis J. McInerney, Chief, Fraud Section, Criminal Division, United States Department  
 21 of Justice, and Brian R. Young, Trial Attorney, and the defendant EARL GROSS, and the  
 22 defendant's attorneys, Dominic Gentile and Paola Armeni, submit this Plea Agreement under Fed.  
 23 R. Crim. P. 11(c)(1)(A) and (B).

24 **I. SCOPE OF AGREEMENT**

25 The parties to this Plea Agreement are the United States of America and Earl Gross. This  
 26 Plea Agreement binds the defendant and the United States Attorney's Office for the District of  
 Nevada and the Criminal Division for the Department of Justice (together "United States"). It does

1 not bind any other prosecuting, administrative, or regulatory authority, the United States Probation  
2 Office, or the Court.

3 The Plea Agreement sets forth the parties' agreement regarding criminal charges referenced  
4 in the Plea Agreement and applicable sentences, fines, restitution and forfeiture. It does not control  
5 or prohibit the United States or any agency or third party from seeking any other civil or  
6 administrative remedies directly or indirectly against the defendant.

7 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

8 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to the  
9 following charges in the indictment returned on February 29, 2012.

10 Count 1: Bank Fraud in violation of 18 U.S.C. § 1344.

11 The defendant also agrees to the forfeiture of the property set forth in Forfeiture Allegation  
12 One of the Indictment.

13 B. Waiver of Trial Rights. The defendant acknowledges that he has been advised and  
14 understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain rights  
15 guaranteed to all defendants by the laws and the Constitution of the United States. Specifically, the  
16 defendant is giving up:

17 1. The right to proceed to trial by jury on all charges, or to a trial by a judge if  
18 the defendant and the United States both agree;

19 2. The right to confront the witnesses against the defendant at such a trial, and  
20 to cross-examine them;

21 3. The right to remain silent at such a trial, with assurance that his silence could  
22 not be used against him in any way;

23 4. The right to testify in his own defense at such a trial if he so chooses;

24 5. The right to compel witnesses to appear at such a trial and testify in the  
25 defendant's behalf; and

26 6. The right to have the assistance of an attorney at all stages of such

1 proceedings.

2 7. The right to challenge venue in the District of Nevada.

3 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw his guilty pleas  
4 after he has entered them in court.

5 D. Additional Charges. The United States agrees not to bring any additional charges  
6 against the defendant arising out of the investigation in the District of Nevada which culminated in  
7 this Plea Agreement and based on conduct known to the United States except that the United States  
8 reserves the right to prosecute the defendant for any crime of violence as defined by 18 U.S.C. § 16.  
9 The United States will move to dismiss any additional charges pending against the defendant in this  
10 case at the time of sentencing.

11 **III. ELEMENTS OF THE OFFENSE**

12 Count 1: The elements of bank fraud under 18 U.S.C. § 1344:

- 13 1. the defendant knowingly carried out a scheme or plan to obtain money or property
- 14 from Wells Fargo Bank by making false statements or promises;
- 15 2. the defendant knew that the statements or promises were false;
- 16 3. the statements or promises were material; that is they had a natural tendency to
- 17 influence, or were capable of influencing, a financial institution;
- 18 4. the defendant acted with the intent to defraud; and
- 19 5. Wells Fargo Bank was federally-insured.

20 **IV. FACTS SUPPORTING GUILTY PLEA**

21 A. The defendant will plead guilty because he is, in fact and under the law, guilty of the  
22 crimes charged.

23 B. The defendant acknowledges that if he elected to go to trial instead of pleading guilty,  
24 the United States could prove his guilt beyond a reasonable doubt and establish its right to forfeiture.  
25 The defendant further acknowledges that his admissions and declarations of fact set forth below  
26 satisfy every element of the charged offenses.

1 C. The defendant waives any potential future claim that the facts he admitted in this Plea  
2 Agreement were insufficient to satisfy the elements of the charged offenses.

3 D. The defendant admits and declares under penalty of perjury that the facts set forth  
4 below are true and correct:

5 1. From at least January 2004 and continuing through at least January 2009, the  
6 defendant was the President and Chief Executive Officer of U.S. Mortgage, a loan servicing  
7 company that did business in the District of Nevada.

8 2. U.S. Mortgage contracted to service loans for Wells Fargo Bank, a federally-  
9 insured financial institution. Under this agreement, U.S. Mortgage was obligated to collect from  
10 borrowers monthly payments made toward the borrowers' mortgage obligations and forward these  
11 proceeds to Wells Fargo Bank. In the event that a borrower paid off the loan – usually by selling  
12 the property – U.S. Mortgage was obligated to remit to Wells Fargo Bank the full payoff amount.  
13 U.S. Mortgage agreed to provide Wells Fargo Bank with monthly reports, which described the status  
14 of the loans, such as the balance, principal and interest, and payment status. U.S. Mortgage was  
15 required to advise Wells Fargo Bank when a homeowner paid off a loan. U.S. Mortgage was  
16 compensated through servicing fees, which it deducted before forwarding payoff amounts or  
17 monthly principal and interest payments to Wells Fargo Bank.

18 3. On or about April 2, 2005, the defendant caused to be submitted to Wells  
19 Fargo Bank a report that represented that the borrowers on five loans (numbers LU-500258, LU-  
20 500457, LU-500571, LU-500609, and LU-500698) were continuing to make monthly payments on  
21 their loans. In fact, the defendant knew that the borrowers had paid off these five loans and caused  
22 U.S. Mortgage to withhold the payoff amounts from Wells Fargo Bank. The defendant caused to  
23 be submitted to Wells Fargo Bank a fraudulent amortization table which represented that the  
24 borrowers were continuing to make only their monthly payments. The defendant also caused U.S.  
25 Mortgage to charge Wells Fargo loan servicing fees to which U.S. Mortgage was not entitled  
26 because it was no longer servicing the five loans described herein. In total, the defendant caused

1 U.S. Mortgage to withhold \$8,440,439 in loan payoff proceeds to which Wells Fargo was entitled.

2 4. The defendant acted with an intent to cheat and deceive.

3 5. The defendant admits that the proceeds obtained directly or indirectly as a  
4 result of his criminal violations equal at least \$8,440,439.

5 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

6 The facts set forth in Section IV of this Plea Agreement shall be admissible against the  
7 defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the defendant does not  
8 plead guilty or withdraws his guilty pleas, the facts set forth in Section IV of this Plea Agreement  
9 shall be admissible at any proceeding, including a trial, for impeaching or rebutting any evidence,  
10 argument or representation offered by or on the defendant's behalf. The defendant expressly waives  
11 all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the use of the facts set forth  
12 in Section IV of this Plea Agreement.

13 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

14 A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges that  
15 the Court must consider the United States Sentencing Guidelines (“USSG” or “Sentencing  
16 Guidelines”) in determining the defendant’s sentence, but that the Sentencing Guidelines are  
17 advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the  
18 maximum term of imprisonment permitted by statute.

19 B. Offense Level Calculations. The parties stipulate to the following calculation of the  
20 defendant’s offense level under the Sentencing Guidelines, acknowledge that these stipulations do  
21 not bind the Court, and agree that they will not seek to apply any other specific offense  
22 characteristics, enhancements or reductions, except as set forth below:

23	Base Offense Level (U.S.S.G. §2B1.1(a)):	7
24	Loss Amount (U.S.S.G. §2B1.1(b)(1)(k)):	20
25	Acceptance of Responsibility (U.S.S.G. §3E1.1(a) and (b)):	<u>(3)</u>
26		

1 TOTAL 24

2 The defendant acknowledges that the statutory maximum sentence and any statutory  
3 minimum sentence limit the Court's discretion in determining the defendant's sentence  
4 notwithstanding any applicable Sentencing Guidelines provisions.

5 The United States and the defendant agree that the defendant may seek a downward  
6 departure under U.S.S.G. § 5K2.0 because of the defendant's and his wife's health.

7 C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG  
8 §3E1.1(a), the United States will recommend that the defendant receive a two-level downward  
9 adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing  
10 a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts  
11 establishing the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully  
12 admit facts establishing the forfeiture allegations when he enters his guilty plea; (d) provides false  
13 or misleading information to the United States, the Court, Pretrial Services, or the Probation Office;  
14 (e) denies involvement in the offense or provides conflicting statements regarding his involvement  
15 or falsely denies or frivolously contests conduct relevant to the offense; (f) attempts to withdraw his  
16 guilty plea; (g) commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates  
17 the conditions of pretrial release.

18 Under USSG §3E1.1(b), the United States will move for an additional one-level downward  
19 adjustment for acceptance of responsibility before sentencing because the defendant communicated  
20 his decision to plead guilty in a timely manner that enabled the United States to avoid preparing for  
21 trial and to efficiently allocate its resources.

22 These Sentencing Guidelines provisions, if applied, will result in a total offense level of  
23 either 25 (if two-level adjustment applies) or 24 (if two-level adjustment and additional one-level  
24 adjustment both apply).

25 D. Criminal History Category. The defendant acknowledges that the Court may base  
26 his sentence in part on the defendant's criminal record or criminal history. The Court will determine

1 the defendant's Criminal History Category under the Sentencing Guidelines.

2 E. Relevant Conduct. The Court may consider any counts dismissed under this Plea  
3 Agreement and all other relevant conduct, whether charged or uncharged, in determining the  
4 applicable Sentencing Guidelines range and whether to depart from that range.

5 F. Additional Sentencing Information. The stipulated Sentencing Guidelines  
6 calculations are based on information now known to the parties. The parties may provide additional  
7 information to the United States Probation Office and the Court regarding the nature, scope, and  
8 extent of the defendant's criminal conduct and any aggravating or mitigating facts or circumstances.  
9 Good faith efforts to provide truthful information or to correct factual misstatements shall not be  
10 grounds for the defendant to withdraw his guilty plea.

11 The defendant acknowledges that the United States Probation Office may calculate the  
12 Sentencing Guidelines differently and may rely on additional information it obtains through its  
13 investigation. The defendant also acknowledges that the Court may rely on this and other additional  
14 information as it calculates the Sentencing Guidelines range and makes other sentencing  
15 determinations, and the Court's reliance on such information shall not be grounds for the defendant  
16 to withdraw his guilty plea.

17 **VII. APPLICATION OF SENTENCING STATUTES**

18 A. Maximum Penalty. The maximum penalty for Bank Fraud under 18 U.S.C. § 1344  
19 is a 30-year prison sentence, a fine of \$ 1,000,000, or both.

20 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in 18  
21 U.S.C. § 3553(a) in determining the defendant's sentence. However, the statutory maximum  
22 sentence and any statutory minimum sentence limit the Court's discretion in determining the  
23 defendant's sentence.

24 C. Parole Abolished. The defendant acknowledges that his prison sentence cannot be  
25 shortened by early release on parole because parole has been abolished.

26 D. Supervised Release. In addition to imprisonment and a fine, the defendant will be

1 subject to a term of supervised release not to exceed 5 years. 18 U.S.C. § 1344. Supervised release  
2 is a period of time after release from prison during which the defendant will be subject to various  
3 restrictions and requirements. If the defendant violates any condition of supervised release, the  
4 Court may order the defendant's return to prison for all or part of the term of supervised release,  
5 which could result in the defendant serving a total term of imprisonment greater than the statutory  
6 maximum prison sentence of 30 years.

7 E. Special Assessment. The defendant will pay a \$100.00 special assessment per count  
8 at the time of sentencing.

9 **VIII. POSITIONS REGARDING SENTENCE**

10 The United States will recommend that the Court sentence the defendant to the low-end of  
11 the Sentencing Guidelines range determined by the Court unless the defendant commits any act that  
12 could result in a loss of the downward adjustment for acceptance of responsibility. The defendant  
13 acknowledges that the Court does not have to follow that recommendation. Notwithstanding its  
14 agreement to recommend a low-end sentence, the United States reserves its right to defend any  
15 lawfully imposed sentence on appeal or in any post-conviction litigation.

16 The defendant may seek a downward adjustment pursuant to 18 U.S.C. § 3553 or USSG §  
17 4A1.3(b)(1) from any sentence the Court may impose.

18 **IX. RESTITUTION**

19 In exchange for benefits received under this Plea Agreement, the defendant agrees to make  
20 full restitution in the amount of \$8,440,439. The defendant cannot discharge his restitution  
21 obligation through bankruptcy proceedings. The defendant acknowledges that restitution payments  
22 and obligations cannot offset or reduce the amount of any forfeiture judgment imposed in this case.

23 **X. FORFEITURE**

24 The defendant knowingly and voluntarily:

25 A. Agrees to the abandonment, the civil administrative forfeiture, the civil judicial  
26 forfeiture, or the criminal forfeiture of \$8,440,439 in United States currency ("property");



- 1           B.     Abandons or forfeits the property to the United States;
- 2           C.     Relinquishes all right, title, and interest in the property;
- 3           D.     Waives his right to any abandonment proceedings, any civil administrative forfeiture
- 4 proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture proceedings of the
- 5 property ("proceedings");
- 6           E.     Waives service of process of any and all documents filed in this action or any
- 7 proceedings concerning the property arising from the facts and circumstances of this case;
- 8           F.     Waives any further notice to him, his agents, or his attorney regarding the
- 9 abandonment or the forfeiture and disposition of the property;
- 10          G.     Agrees not to file any claim, answer, petition, or other documents in any proceedings
- 11 concerning the property;
- 12          H.     Waives the statute of limitations, the CAFRA requirements, Fed. R. Crim. P. 7 and
- 13 32.2, the constitutional requirements, and the constitutional due process requirements of any
- 14 proceedings concerning the property;
- 15          I.     Waives his right to a jury trial on the forfeiture of the property;
- 16          J.     Waives all constitutional, legal, and equitable defenses to the forfeiture or
- 17 abandonment of the property in any proceedings, including but not limited to (1) constitutional or
- 18 statutory double jeopardy defenses; and (2) defenses under the Excessive Fines or Cruel and
- 19 Unusual Punishments Clauses of the Eighth Amendment to the United States Constitution;
- 20          K.     Agrees to the entry of an Order of Forfeiture of the property to the United States;
- 21          L.     Agrees that forfeiture is immediately due and payable and subject to immediate
- 22 collection by the United States;
- 23          M.     Agrees and understands the abandonment, the civil administrative forfeiture, the civil
- 24 judicial forfeiture, or the criminal forfeiture of the property shall not be treated as satisfaction of any
- 25 assessment, fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon
- 26 the defendant in addition to the abandonment or the forfeiture; and

1 N. The defendant acknowledges that the amount of the forfeiture may differ from, and  
2 may be significantly greater than, the amount of restitution.

3 **XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

4 Before or after sentencing, upon request by the Court, the United States, or the Probation  
5 Office, the defendant will provide accurate and complete financial information, submit sworn  
6 statements, and/or give depositions under oath concerning his assets and his ability to pay. The  
7 defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and will  
8 release funds and property under his control in order to pay any fine, forfeiture, or restitution ordered  
9 by the Court.

10 **XII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

11 A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges that:

- 12 (1) He has read this Plea Agreement and understands its terms and conditions;  
13 (2) He has had adequate time to discuss this case, the evidence, and this Plea  
14 Agreement with his attorney;  
15 (3) He has discussed the terms of this Plea Agreement with his attorney;  
16 (4) The representations contained in this Plea Agreement are true and correct,  
17 including the facts set forth in Section IV; and  
18 (5) He was not under the influence of any alcohol, drug, or medicine that would  
19 impair his ability to understand the Agreement when he considered signing this Plea Agreement and  
20 when he signed it.

21 The defendant understands that he alone decides whether to plead guilty or go to trial, and  
22 acknowledges that he has decided to enter his guilty plea knowing of the charges brought against  
23 him, his possible defenses, and the benefits and possible detriments of proceeding to trial. The  
24 defendant also acknowledges that he decided to plead guilty voluntarily and that no one coerced or  
25 threatened him to enter into this Plea Agreement.

26 B. Waiver of Appeal and Post-Conviction Proceedings. The defendant knowingly and

1 expressly waives: (a) the right to appeal any sentence imposed within or below the applicable  
2 Sentencing Guideline range as determined by the Court; (b) the right to appeal the manner in which  
3 the Court determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right  
4 to appeal any other aspect of the conviction or sentence and any order of restitution or forfeiture.

5 The defendant also knowingly and expressly waives all collateral challenges, including any  
6 claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the Court  
7 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of  
8 counsel.

9 The defendant reserves only the right to appeal any portion of the sentence that is an upward  
10 departure from the Sentencing Guidelines range determined by the Court.

11 The defendant acknowledges that the United States is not obligated or required to preserve  
12 any evidence obtained in the investigation of this case.

13 C. Removal/Deportation Consequences. The defendant understands and acknowledges  
14 that if he is not a United States citizen, then it is highly probable that he will be permanently  
15 removed (deported) from the United States as a consequence of pleading guilty under the terms of  
16 this Plea Agreement. The defendant has also been advised if his conviction is for an offense  
17 described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the United States and  
18 will not be allowed to return to the United States at any time in the future. The defendant desires  
19 to plead guilty regardless of any immigration consequences that may result from his guilty plea,  
20 even if the consequence is automatic removal from the United States with no possibility of returning.  
21 The defendant acknowledges that he has specifically discussed these removal/deportation  
22 consequences with his attorney.

23 **XIII. ADDITIONAL ACKNOWLEDGMENTS**

24 This Plea Agreement resulted from an arms-length negotiation in which both parties  
25 bargained for and received valuable benefits in exchange for valuable concessions. It constitutes  
26 the entire agreement negotiated and agreed to by the parties. No promises, agreements or

1 conditions other than those set forth in this agreement have been made or implied by the defendant,  
2 the defendant's attorney, or the United States, and no additional promises, agreements or conditions  
3 shall have any force or effect unless set forth in writing and signed by all parties or confirmed on  
4 the record before the Court.

5  
6 DATE 6/11/13

B. R. Young  
Brian R. Young  
Trial Attorney

8  
9 DATE 6/4/13

Paola Armeni  
Paola Armeni  
Counsel for the Defendant

10  
11 DATE 6/4/2015

Earl Gross  
Earl Gross  
Defendant

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