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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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7 UNITED STATES DISTRICT COURT
 8 DISTRICT OF NEVADA

9 -oOo-

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

14 LEON BENZER,

15 Defendant.

) CASE NO. 2:13-CR-18-JCM-GWF
 2:13-CR-174-JCM-CWT
) **PLEA MEMORANDUM**

17 The United States of America, by and through William Stellmach, Acting Chief, U.S.
 18 Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief,
 19 and Thomas B.W. Hall and Alison L. Anderson, Trial Attorneys, U.S. Department of Justice,
 20 Criminal Division, Fraud Section, the defendant, LEON BENZER ("Defendant"), and the
 21 defendant's attorney, Daniel J. Albrechts, submit this plea memorandum.
 22

23 The United States and the defendant have reached the following plea agreement, which is
 24 not binding on the court:
 25
 26

I.THE PLEA AGREEMENT

A. The Plea

1
2
3 1. Defendant will plead guilty to each count in the Indictment in the case captioned
4 *United States v. Benzer*, Case No. 2:13-cr-00018-JCM-GWF, charging Defendant with
5 conspiracy to commit wire and mail fraud, in violation of Title 18, United States Code, Section
6 1349 (Count 1); wire fraud , in violation of Title 18, United states Code, Section 1343 (Counts
7 2-15); and mail fraud, in violation of Title 18, United states Code, Section 1341 (Counts 16-17) ,
8 and each count in the Indictment in the case captioned *United States v. Benzer*, Case No. 2:13-cr-
9 174-KJD-CWH, charging Defendant with tax evasion in violation of Title 26, United States
10 Code, Section 7201 (Counts 1-2).

11
12 **B. Additional Charges**

13 2. The United States Department of Justice, Criminal Division, Fraud Section agrees
14 to bring no additional criminal charges in the District of Nevada against the defendant relating to
15 or arising from the offenses charged in the Indictments identified above, except for any crime of
16 violence and any crime unknown to the Fraud Section before the time the parties sign this Plea
17 Memorandum.
18

19 **C. Sentencing Guideline Calculations**

20 3. Defendant understands that the Court is required to consider the United States
21 Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) among other factors in
22 determining the defendant’s sentence. Defendant understands that the Sentencing Guidelines are
23 advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise
24 its discretion to impose any reasonable sentence up to the maximum set by statute for the crime
25 of conviction.
26

1 4. Sentencing Guidelines:

2 a. The parties have no agreement concerning the sentencing guidelines except as to
3 the following guidelines related to the counts charged in the Indictment in *United States v.*
4 *Benzer*, Case No. 2:13-cr-00018-JCM-GWF:

5 1) The Base Offense Level is 7, pursuant to U.S.S.G. §2B1.1(a); and

6 2) The Number of Victims Enhancement of +2, pursuant to U.S.S.G.
7 §2B1.1(b)(2)(A)(i).

8 5. Acceptance of Responsibility: Pursuant to U.S.S.G. §3E1.1(a), the United States
9 will recommend that the defendant receive a 2-level adjustment for acceptance of responsibility
10 unless Defendant (a) fails to make a complete factual basis for the guilty plea at the time it is
11 entered; (b) is untruthful with the Court or probation officers in any respect, including without
12 limitation, financial information; (c) denies involvement in the offense or provides conflicting
13 statements regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e)
14 engages in criminal conduct; (f) fails to appear in court; or (g) violates the conditions of
15 defendant's pretrial release conditions. Pursuant to U.S.S.G. §3E1.1(b), the United States will,
16 in its sole discretion, make a motion for an additional 1-level adjustment for acceptance of
17 responsibility prior to sentencing if the defendant timely notifies the United States of the
18 defendant's intention to plead guilty, thereby permitting the United States to avoid preparing for
19 trial and allowing for the efficient allocation of resources.

20 6. Defendant's Criminal History Category will be determined by the Court.

21
22 **D. Other Sentencing Matters**

23 7. The parties agree that the Sentencing Guideline calculations are based on
24 information now known and could change upon investigation by the United States Probation
25
26

1 Office. It is possible that factors unknown or unforeseen by the parties to the Plea Memorandum
2 may be considered in determining the offense level, specific offense characteristics, and other
3 related factors. In that event, the defendant will not withdraw his plea of guilty. Both Defendant
4 and the United States are free to: (a) supplement the facts by supplying relevant information to
5 the United States Probation Office and the Court, and (b) correct any and all factual inaccuracies
6 relating to the calculation of the sentence.

7
8 8. The stipulations in this Plea Memorandum do not bind either the United States
9 Probation Office or the Court.

10 **E. Fines and Special Assessment**

11 9. Defendant agrees that the Court may impose a fine due and payable immediately
12 upon sentencing.

13 10. Defendant will pay the special assessment of \$100 per count of conviction at the
14 time of sentencing.

15
16 **F. Restitution & Forfeiture**

17 11. Defendant understands that restitution is mandatory and agrees to make full
18 restitution in this case. The parties have no understanding or agreement on the amount of
19 restitution or forfeiture, and the Defendant understands that the restitution and forfeiture amounts
20 will be determined by the Court at his sentencing. Defendant understands that any restitution
21 imposed by the Court may not be discharged in whole or in part in any present or future
22 bankruptcy proceeding.

23
24 **G. Waiver of Appeal**

25 12. In exchange for the concessions made by the United States in this Plea
26 Memorandum, Defendant knowingly and expressly waives the right to appeal his guilty plea and

1 conviction. Defendant also waives all collateral challenges, including any claims under 28
2 U.S.C. § 2255, to Defendant's conviction and the procedures by which the Court adjudicated
3 guilt, except non-waivable claims of ineffective assistance of counsel.

4 13. Defendant only reserves the right to appeal only his sentence and the manner in
5 which that sentence was determined on the grounds set forth in Title 18, United States Code,
6 Section 3742.

7 **H. Limitations**

8 14. This Plea Memorandum is limited to the Criminal Division of the United States
9 Department of Justice and cannot bind any other federal, state, or local prosecuting,
10 administrative, or regulatory authority.
11

12 **II. PENALTY**

13 15. The maximum penalty for a violation of Title 18, United States Code, Section
14 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant
15 is also subject to supervised release for a term of not greater than five (5) years.
16

17 16. The maximum penalty for a violation of Title 26, United States Code, Section
18 7201, is a term of imprisonment of not more than five (5) years, a fine of not more than two-
19 hundred-fifty-thousand dollars (\$250,000) or twice the gross gain or loss resulting from the
20 offense under Title 18 U.S.C. § 3571, or both, per count.

21 17. The maximum penalty for a violation of Title 18, United States Code, Sections
22 1341 and 1343, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both.
23 Defendant is also subject to supervised release for a term of not greater than five (5) years, per
24 count.
25
26

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

7
8 19. Defendant is required to pay for the costs of imprisonment, probation, and
9 supervised release, unless Defendant establishes that Defendant does not have the ability to pay
10 such costs, in which case the court may impose an alternative sanction such as community
11 service.

12 **III. ELEMENTS**

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

15 a. First, from as early as in or about August 2003 through at least in or about
16 February 2009, there was an agreement between two or more persons to commit mail fraud and
17 wire fraud;
18

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

20 c. Third, the defendant became a member of the conspiracy knowing of at least one
21 of its objects and intending to help accomplish it.

22 21. The essential elements for the offense of tax evasion, in violation of 26 U.S.C. §
23 7201, are as follows:

24 a. First, an affirmative act by defendant to evade or defeat a tax;

25 b. Second, an additional tax due and owing; and,
26

1 c. Third, willfulness as defined as an intentional violation of a known legal duty, i.e.,
2 to report all of one's income on their tax return and to pay all required taxes.

3 22. The essential elements for the offense of wire fraud, in violation of 18 U.S.C. §
4 1343, are as follows:

5 d. First, the existence of a scheme to defraud;

6 e. Second, the use of wire, radio, or television to further the scheme; and,

7 f. Third, a specific intent to defraud.
8

9 23. The essential elements for the offense of mail fraud, in violation of 18 U.S.C. §
10 1341, are as follows:

11 g. First, the existence of a scheme to defraud;

12 h. Second, the use of the mail to further the scheme; and,

13 i. Third, a specific intent to defraud.
14

15 IV. FACTS

16 24. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

17 A. The HOA Conspiracy

18 25. Defendant specifically admits and declares under penalty of perjury that all of the
19 facts set forth below in Paragraphs 25-45 of which Defendant has knowledge of as a member of
20 the conspiracy are true and correct. Defendant acknowledges that he knew of the unlawful
21 purpose of the conspiracy and willfully joined it and that he is, therefore, responsible as a
22 member of the conspiracy for those actions that were taken by his co-conspirators in furtherance
23 of the conspiracy. Defendant's actions in furtherance of the conspiracy are specifically indicated.
24

25 26. Defendant Benzer together with his attorney coconspirator developed a scheme to
26 take over the control of targeted Homeowners' Associations ("HOAs") in the Las Vegas area.

1 The targeted HOA's had to meet certain criteria including number of units and the potential for
2 construction defect ("CD") litigation. The scheme began with Defendant Benzer gaining control
3 of a majority of board seats on a targeted HOA. This was done through recruiting straw
4 purchasers who were willing, for a fee, to allow Defendant Benzer to use their names and credit
5 scores to purchase condos at targeted HOA's.

6 27. The straw purchases were funded by Defendant Benzer who was in part bank
7 rolled by his attorney coconspirator. Defendant Benzer's coconspirator had agreed to advance
8 Benzer over \$2 million in connection with the scheme. The object was through controlled HOA
9 boards, to steer CD litigation to the law firm of Defendant Benzer's co-conspirator. In return for
10 steering the cases to the designated law firm, the attorney agreed to share 10% of the attorney's
11 fee with Defendant Benzer at the conclusion of the case.

12 28. Defendant Benzer also planned to have CD remediation work steered to his
13 company, Silver Lining construction ("SLC") through the same controlled HOA boards. The
14 conspiracy funded all expenses associated with the purchase of the condos by the straw
15 purchasers as well as all carrying expenses associated with the condos. This included earnest
16 money, down payments, mortgage payments, HOA dues, and taxes. In addition, the straw buyers
17 were promised a yearly fee, ranging from approximately four to five thousand dollars for the use
18 of their names and credit scores which were used to obtain financing for the condos.

19 29. Many straw buyers routinely lied on mortgage loan applications about the source
20 of the down payment and/or the primary use of the condo in order to secure financing or more
21 favorable rates. Many straw buyers were also designated by Defendant Benzer to run for and
22 serve on an HOA board of directors ("BOD"). However, at times the person designated to run for
23 a BOD seat was different than the straw owner whose credit was used in connection with the
24
25
26

1 original purchase of the condo. In these cases, the straw owner agreed to allow a quit claim deed
2 to be executed that would deed a percentage (from 1% to 50%) ownership in the condo to the
3 designated BOD candidate. That way the “candidate” could run as an “owner” of the particular
4 condo. All directors controlled by Defendant Benzer, when elected, received money from
5 Defendant Benzer in return for their taking direction and instructions from Defendant Benzer and
6 his coconspirators as to what action to take as members of the HOA BOD.

7
8 30. Once in control of a BOD, Defendant Benzer would direct that an attorney
9 selected by Defendant Benzer be hired by the captive BOD as General Counsel for the HOA.
10 Coconspirator Keith Gregory – who was at the time one of Defendant Benzer’s attorneys – was
11 designated by Defendant Benzer to be hired as the General Counsel at Vistana and Sunset Cliffs.
12 Coconspirator David Amesbury, also one of Defendant Benzer’s attorneys as well as his business
13 partner in the Court House Café, was hired at Benzer’s direction as General Counsel at Chateau
14 Versailles and hired as a “special election master” at Pebble Creek and Chateau Nouveau.
15 Coconspirator Barry Levinson was also designated by Defendant Benzer to serve as General
16 Counsel at Park Avenue and Pebble Creek. While these attorneys were hired to represent the
17 HOA, they each took direction from Defendant Benzer and his coconspirators, assisted the goals
18 of the conspiracy, and were paid by Defendant Benzer for the work they performed.

19
20 31. Defendant Benzer also selected certain management companies to be hired by his
21 controlled board members. Platinum Management as well as the two management companies
22 Defendant Benzer secretly owned – Family HOA and Crystal – were hired at several targeted
23 HOAs including Vistana.

24
25 32. Once the attorney and management companies were in place Defendant Benzer,
26 through his co-conspirators, was able to direct the actions of the HOAs and was able to rig BOD

1 elections in order to assure his continued control. The conspirators were successful in gaining
2 control at Vistana, Park Avenue, Chateau Versailles, Chateau Nouveau, and Pebble Creek. They
3 attempted to gain control at Jasmine and other HOAs

4 33. The paid straw owners included Sam Ruvolo at Chateau Nouveau and Park
5 Avenue, and Edith Gillespie at Vistana and Chateau Versailles. In securing a loan for Edith
6 Gillespie's unit at Chateau Versailles, Edith Gillespie stated on her loan application that she
7 worked for SLC, although she never worked for SLC. Edith Gillespie was also paid for
8 recruiting other straw owners. The paid directors included, among others, Sam Ruvolo at
9 Chateau Nouveau and Park Avenue, Charles McChesney at Chateau Nouveau, and David Ball at
10 Chateau Nouveau.
11 Chateau Nouveau.

12 34. At Vistana, in order to secure a contractual right of first refusal and obtain a
13 "mobilization fee", Defendant Benzer, with the assistance of Keith Gregory and David
14 Amesbury, created the illusion that an emergency HOA meeting was needed in September 2007.
15 This was done through the efforts of coconspirators David Amesbury, Keith Gregory, Ralph
16 Priola, Steve Wark and others at the direction of Defendant Benzer. As a result an emergency
17 HOA meeting was scheduled and held and SLC was awarded over \$1 million as a mobilization
18 fee and a CD remediation contract.
19 fee and a CD remediation contract.

20 35. At Chateau Versailles, Chateau Nouveau, and Park Avenue, through controlling
21 the BOD, the management company, and the attorneys hired by the Defendant Benzer controlled
22 BOD, Defendant Benzer was able to direct the awarding of the CD litigation case to his
23 coconspirator attorney, and to have SLC in place to do the resulting remedial work once the CD
24 cases settled.
25 cases settled.
26

1 36. At Jasmine, Defendant Benzer attempted to take over the BOD through three
2 straw purchasers who initially agreed to become owners, to run for the Jasmine BOD, and in
3 return for money from Defendant Benzer, to steer potential CD litigation and remediation work
4 to a law firm and company designated by Defendant Benzer.

5 **B. The Tax Evasion Conduct**

6 37. As of April 2007, Defendant Benzer had failed to pay his personal tax liability
7 owed for the 2001 through 2005 tax years, the past due liability of SLC for the employment tax
8 liability, and the unemployment tax liability, each of which was a material amount of monies
9 owed.
10

11 38. The IRS thereafter issued a Notice of Intent to File a Levy. On or about May 9,
12 2007, Defendant Benzer appealed the process indicating that he wanted to enter into an
13 “Offer-In-Compromise” with the IRS to pay a portion of what was owed in full satisfaction of all
14 his tax liabilities.

15 39. During this “Offer in Compromise” process the IRS requested detailed financial
16 information from Defendant Benzer in order to accept less than the full amount of tax due and
17 owing in satisfaction of the outstanding tax liability.
18

19 40. On or about August 29, 2007, Defendant Benzer opened personal bank account
20 number X-XXX-XXX-7214 (“Account -7214”) with U.S. Bank in his own name.

21 41. Between in or about March 2005 and in or about January 2008, Defendant Benzer
22 and SLC received in excess of approximately \$7 million from the Vistana HOA for work
23 purportedly done pursuant to SLC's contract with the Vistana HOA.
24
25
26

1 42. As part of these payments, on or about September 21, 2007, Defendant Benzer
2 received a wire transfer in the amount of \$1,098,000 into Account -7214 from the Vistana HOA
3 for work purportedly performed by SLC pursuant to its contract with the Vistana HOA.

4 43. Defendant Benzer used most of the funds from the Vistana HOA in Account -
5 7214 for personal uses.

6 44. On or about September 25, 2007, as part of the “Offer in Compromise” process,
7 Defendant Benzer or those acting at his behest filed IRS Forms 433-A and 433-B that did not
8 disclose the existence of Account -7214 or the assets therein.

9 45. On or about September 25, 2007, in the State and Federal District of Nevada and
10 elsewhere, Defendant Benzer, owing a tax deficiency on his employment taxes for tax periods
11 September 30, 2003, December 31, 2003, and March 31, 2004, and on his unemployment taxes
12 for tax year 2003, all in a material amount of money, willfully made affirmative attempts to
13 evade the payment of his employment and unemployment taxes, including, but not limited to:
14 opening and causing to be opened, and using and causing to be used, a bank account at US
15 Bank which was established in his name, to conceal money and assets; and preparing and
16 causing to be prepared, and filing and causing to be filed materially false financial forms with the
17 IRS, while SLC continued to owe an outstanding employment and unemployment tax liability.
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20 **V. ACKNOWLEDGMENT**

21 46. Defendant acknowledges by Defendant’s signature below that Defendant has read
22 this Plea Memorandum, that Defendant understands the terms and conditions and the factual
23 basis set forth herein, that Defendant has discussed these matters with Defendant’s attorney, and
24 that the matters set forth in this memorandum, including the facts set forth in Part IV above, are
25 true and correct.
26

1 47. Defendant acknowledges that Defendant has been advised, and understands, that
2 by entering a plea of guilty Defendant is waiving, that is, giving up, certain rights guaranteed to
3 Defendant by law and by the Constitution of the United States. Specifically, Defendant is giving
4 up:

5 a. The right to proceed to trial by jury on the original charges, or to a trial by a judge
6 if Defendant and the United States both agree;

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

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

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

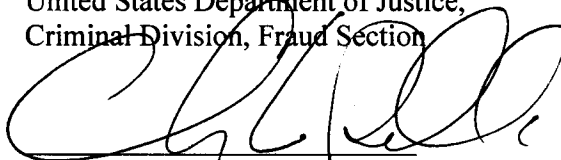
13 e. The right to compel witnesses to appear at such a trial, and to testify in
14 Defendant's behalf; and,
15

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

17 48. Defendant acknowledges that Defendant is, in all respects, satisfied by the
18 representation provided by Defendant's attorney and that Defendant's attorney has discussed
19 with Defendant the burdens and benefits of this agreement and the rights he waives herein.
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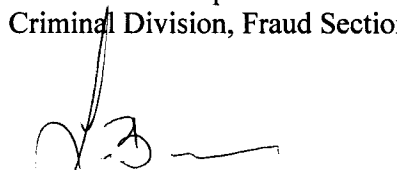
1 49. Defendant, Defendant's attorney, and the attorney for the United States
2 acknowledge that this Plea Memorandum contains the entire negotiated and agreed to by and
3 between the parties, and that no other promise has been made or implied by Defendant,
4 Defendant's attorney, or the attorney for the United States.
5

6 WILLIAM STELLMACH
7 Acting Chief
8 United States Department of Justice,
9 Criminal Division, Fraud Section



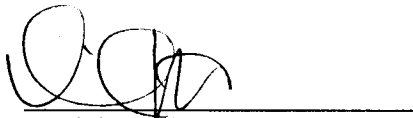
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11 Deputy Chief
12 THOMAS B.W. HALL
13 ALISON L. ANDERSON
14 Trial Attorneys
15 United States Department of Justice
16 Criminal Division, Fraud Section

9 1/21/15
10 _____
11 DATED



17 LEON BENZER
18 Defendant

15 1/21/15
16 _____
17 DATED



19 Daniel J. Albrechts
20 Counsel for Defendant Benzer
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19 1/21/15
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21 DATED