



rates, leaving them with few options in the mortgage lending market. The majority of the buyers involved in the scheme were Hispanic.

It was part of the fraudulent scheme that defendant Gallagher knowingly misrepresented material facts to mortgage lending companies, with the intent to deceive, by: a) preparing and causing to be prepared false mortgage loan documents submitted to mortgage lending companies; b) defrauding mortgage lending companies by misrepresenting that otherwise unqualified real estate buyers had actually qualified for mortgages for which they had applied; c) falsifying documents relating to the origin of the buyer's down payment; d) causing false appraisals of real estate; e) causing false W-2 forms to be prepared; f) causing false employment documents to be prepared; and g) providing false seller second mortgages.

## II. **PLEA AGREEMENT**

The defendant has entered into a written guilty plea agreement with the government. The defendant is pleading guilty to all counts charged against him in the indictment, Counts One through Five. A copy of the written Plea Agreement is attached as Exhibit "A" and incorporated here.

## III. **ELEMENTS OF THE OFFENSES**

### Counts 1, 2 and 3

The elements of a violation of Title 18, United States Code, Section 1343, wire fraud, are:

1. Whoever devises any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises,

2. And for the purpose of executing such scheme or artifice or attempting so to do,
3. Transmits or causes to be transmitted by means of wire, radio or television communication in interstate or foreign commerce,
4. Any writings, signs, signals, pictures or sounds for the purpose of executing such scheme,
5. And does so knowingly.

Counts 4 and 5

The elements of a violation of Title 26, United States Code, Section 7203, failing to file a federal income tax return, are:

1. The defendant was required to file an income tax return;
2. The defendant did not file an income tax return in a timely fashion; and
3. The defendant's failure to file was willful.

**IV. MAXIMUM SENTENCES**

Counts 1, 2 and 3 - Wire fraud

18 U.S.C. § 1343

20 years imprisonment, a \$250,000 fine, 3 years supervised release, and a \$100 special assessment, as to each count.

Counts 4 and 5 - Failing to file federal income tax returns

26 U.S.C. § 7203

1 year imprisonment, a \$100,000 fine, 1 year supervised release and a \$25 special assessment, as to each count.

**TOTAL MAXIMUM SENTENCE - 62 years imprisonment, 3 years supervised release, an \$800,000 fine, and a \$350 special assessment. Restitution may also be ordered against the defendant.**

**V. FACTUAL BASIS FOR THE GUILTY PLEA**

The government would prove the following facts beyond a reasonable doubt if this case were to proceed to trial:

**A. Buyers Were Looking for Affordable Housing in Allentown. Many of the Buyers Were So-Called “Subprime” Borrowers and Were Also Hispanic.**

Co-Defendant Patrick Balf was the manager and owner of a real estate business known as “The Real Estate Center,” located at 112 North 7th Street, in Allentown. As a real estate agent, Balf searched for buyers for the houses which Balf knew had been “flipped,” that is, properties which had been recently purchased (usually by investors) and then offered for sale at a significantly higher price. The buyers on which the defendant Christopher Gallagher focused his attention were so-called “subprime” borrowers. Subprime borrowers have damaged credit, leaving them with few options in the mortgage lending market. What is more, the majority of the buyers the defendants targeted are Hispanic, a population that, according to government and private studies, has had some difficulties obtaining mortgage loans. The defendant dealt primarily with real estate in a limited area of downtown Allentown.

**B. The Defendants Used “Creative Financing” to Make Sure the Buyers got Mortgage Loans. “Creative Financing” is Nothing More Than a Euphemism for Fraud.**

Once co-defendant Balf found a buyer for a particular house, he would refer them to defendant Christopher Gallagher at the Mortgage Access Center, located in the same building as

Balf's Real Estate Center. Defendant Gallagher was the manager and supervisor at the Mortgage Access Center. Gallagher contacted mortgage lending companies to search for a mortgage loan suitable for the buyer to finance the purchase of the house. After he found such a loan, he would advise Balf of the criteria set by the mortgage lending company for the loan. That is, he would let Balf know what the buyer would need to demonstrate to qualify for the loan.

To make sure that given buyers qualified for the loan, Balf – working with The Mortgage Access Center and defendant Gallagher – would structure the transaction to make it appear – falsely – that the buyer met the criteria set by the mortgage lending company. Balf referred to this structure as “creative financing.” The mortgage lending companies relied on this “creative financing” in their decisions to provide mortgage loans to the buyers.

This “creative financing” is the heart of the scheme to defraud, and was carried out in three primary ways.

1. **The Defendant Falsified How Much Cash a Buyer Used to Purchase the House.**

First, Balf, Gallagher and others arranged to make it appear – falsely – that the buyers brought significant amounts of cash to the real estate closings to pay for their house. How much cash a buyer pays in the transaction is important for the mortgage lending companies. The more the buyer pays in cash, the less the mortgage lending company must provide as a loan. The lower the amount of the loan relative to the value of the mortgaged property, the less the risk to the mortgage lending company. What is more, the conventional wisdom in the real estate finance industry is that the more the buyer pays in cash, the more likely he or she will strive to make the mortgage payments.

There were two primary ways in which Balf, Gallagher and others made it appear that the buyers brought significant amounts of cash to the closings:

i. **The Defendants Manipulated “Verification of Deposit” Forms.**

In several real estate transactions, Gallagher or Balf would direct co-defendant Donald Stone to accompany the buyer to his or her bank. There, Stone provided cash to the buyer to deposit in an account in the buyer’s name. Stone then requested from the bank a “verification of deposit” form stating that the cash was in the buyer’s account. Stone then immediately withdrew the money in the form of a certified or cashier’s check. The money would be in the account for only minutes. The “verification of deposit” form and the certified or cashier’s check would be provided to the mortgage lending company as proof that the buyer could and would pay cash for a portion of the purchase price of the house. The cash, however, did not come from the buyer, a fact hidden from the mortgage lending company.

ii. **The Defendants Used “Circle Checks” to Make it Appear That the Buyers Invested Cash in Their Houses.**

In several real estate transactions, Gallagher assisted Balf in using so-called “circle checks.” The term “circle checks” was coined to describe the circular path the money followed from the seller’s side of the transaction, to the buyer’s side, and then back again to the seller’s side. This procedure was intended to obscure from the mortgage lending company the actual source of the money. A “circle check” works as follows: Gallagher and Balf knowing that the mortgage lending company required the real estate buyer to bring cash to the closing but also knowing that the buyer would not be able to come up with such cash, convinced the real estate seller (or someone close to the seller (e.g., a business partner)) to bring a certified or cashier’s

check, made out to the settlement agent, to the closing. The settlement agent (and, in turn, the mortgage lending company) was falsely told that the check was from the buyer (not the seller). The money from the check was accounted for in the mortgage loan documents as cash from the buyer, when in fact it was not from the buyer. At closing, the real estate seller (or the person who provided the check) is reimbursed for the check from the proceeds of the sale. Again, the mortgage lending company is falsely led to believe that the buyer brought cash to the closing.

### **Defendant Gallagher's role in the fraudulent scheme**

Defendant Christopher Gallagher was the primary individual who identified mortgage lending companies that would provide financing to the house buyers with whom Balf was working. He looked for mortgage lending companies with particular underwriting standards for their loan products. Most important were the "sourcing" and "seasoning" standards. "Sourcing" here refers to the documentation a mortgage lending company requires to determine the source of funds used to purchase a house. "Seasoning" is time; it refers here to the length of time prior to closing a borrower possesses the funds used to purchase a house. Gallagher identified mortgage lending companies that either (1) would not need information as to the source of cash a buyer used to pay for the house at closing or (2) did not require cash to be seasoned. If a mortgage lending company did not require "sourced" funds, then the company would not know - unless the mortgage broker told it - that the funds did not come from the borrower. If a mortgage lending company did not require "seasoned" funds, then the mortgage lending company would not know - unless the mortgage broker told it - that the funds were in the borrower's bank account for only minutes. Put another way, the mortgage lending companies that did not "source" or "season" funds were relying on the representations the mortgage broker was making as to where the funds

were coming from.

Gallagher knew that Balf's "creatively financed" deals misrepresented the source of cash used to purchase houses. By using mortgage lending companies that did not require "sourced" or "seasoned" funds to finance Balf's deals, Gallagher ensured that "circle checks" and the manipulated "verification of deposit" forms would work. That is, Gallagher identified mortgage lending companies that would not discover the "creative financing."

Gallagher supervised and performed most of the work necessary to arrange the financing for Balf's deals. While working at the Mortgage Access Center, the mortgage broker for the vast majority of the deals, Gallagher would, among other things, prepare the papers for the mortgages, communicate with the mortgage lending companies about the mortgages, and gather information about the borrowers for Balf and the mortgage lending companies. Gallagher knew that important facts about the transactions were being misrepresented to the mortgage lending companies (e.g., the amount of cash a borrower had and was using to purchase a house).

**The Defendant Used Fake Second Mortgages to Finance the Purchases.**

Gallagher arranged to make it appear – falsely – that the sellers provided the buyers with second mortgages – "seller's seconds" – to assist in the sale. The existence of a "seller's second," like cash from the buyer, means that the mortgage lending company can provide a lower mortgage to finance the sale. That is, the more the seller finances the sale for the borrower, the less the mortgage company is at risk. And, as noted above, the lower the amount of the loan relative to the value of the mortgaged property, the less the risk to the mortgage lending company and the more likely the mortgage lending company will approve a loan. To make the mortgage lending companies believe that there was a "seller's second" in a deal, and

therefore induce them to provide a loan, Gallagher or individuals acting at his direction would prepare documents indicating that the seller was lending money to the buyer in the form of a second mortgage. Gallagher or individuals acting at his direction even went so far as to record those documents with the county recorder of deeds. But, neither at the time the “seller’s second” documents were prepared nor at any time thereafter was there any intention for anyone to make payments on that “seller’s second” or to collect on that “seller’s second.” The “seller’s second” existed on paper only; a fact concealed from the mortgage lending company.

**The Defendant Falsified the Income and Employment Histories of the Buyers.**

Gallagher arranged to falsify the income and/or employment histories of several real estate buyers. A vital factor in underwriting a loan is a determination of the ability of the applicant to repay the loan. To make that determination, a mortgage lending company will, among other things, examine the applicant’s employment history. A mortgage lending company will want to see that an applicant has a steady stream of employment income at a level that suggests that he or she can afford the payments on the applied-for loan. In several real estate transactions, Gallagher falsely represented – orally and in writing – that particular buyers worked for The Spencer Foundation, an organization for which co-defendant Balf served as president. Gallagher went so far as to cause the creation of Internal Revenue Service W-2 forms indicating – again falsely – that particular buyers worked for The Spencer Foundation, when in fact they did not. These false income and employment histories were meant to induce mortgage lending companies to provide loans.

In summary, Gallagher arranged financing for Balf’s real estate deals. For instance, he helped find the mortgage lending companies that did not require “sourced” or

“seasoned” funds; he did clerical tasks to ensure that the paper work for the mortgage transactions was complete; he directed co-defendant Stone to deposit money in the bank accounts of several borrowers to obtain “verification of deposit” forms knowing that the forms were to be used to misrepresent to mortgage lending companies the source of funds used to purchase a house; and, he ensured that persons who funded “circle checks” were reimbursed the money they provided at closing. All the while, Gallagher knew that important facts about the transactions were being misrepresented to the mortgage lending companies (e.g., the amount of cash a borrower had and was using to purchase a house).

**C. Use of the Wires.**

An essential part of the scheme was the arranging of mortgage loans from mortgage lending companies to finance the buyer’s purchase of the particular real estate. In the ordinary course of business, Balf and/or Gallagher at the Mortgage Access Center communicated with mortgage lending companies (and others) through the use of wire communications in interstate commerce, i.e. by facsimile (fax). Several of the mortgage lending companies were located in states other than Pennsylvania, for instance, California and New Jersey. In particular, Gallagher caused the Mortgage Access Center to use wire communications in interstate commerce (faxes) to send to and receive from mortgage lending companies (and others) certain documents necessary for the mortgage loan transactions. Gallagher knew that the Mortgage Access Center used wire communications in interstate commerce in arranging for mortgage loans for the buyers.

In Counts One through Three of the indictment, Gallagher is charged with causing wire communications relating to three separate properties in Allentown and Bethlehem,

Pennsylvania. These wires involved the transfer of mortgage loan funds which originated in California and New York, and which were sent to a title company in Pennsylvania. These wire transfers resulting from defendant's fraudulent scheme as charged in Counts One through Three of the indictment caused a fraudulent loss in the amount of approximately \$143,845.

**D. The Tax Counts**

During calendar years 2001 through 2002, defendant Christopher Gallagher failed to file federal income tax returns, despite earning more than the gross income filing requirement in each of years 2001 and 2002. The IRS investigation revealed that Christopher Gallagher received commission checks from The Mortgage Access Center for year 2001 in the amount of \$32,884 and in 2002 of \$38,600. He failed to file an income tax return as required in either year. There is a total tax loss of approximately \$28,030 to the IRS, plus additional penalties and interest.

Respectfully submitted,

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United States Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Government's Guilty Plea Memorandum in this case was served upon defendant by first class United States mail, postage prepaid, as follows:

Christopher Gallagher  
240 Gates Street  
Philadelphia PA, 19127

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Date: January 26, 2007