



**PLEA AGREEMENT AS TO DEF. CHIAVOLOA**

28 amount of loss caused by the defendant's wrongful conduct. The  
27 of restitution to the victim(s) of his crime, for up to the full  
26 By signing this Agreement, the defendant also agrees to the payment  
25 the Court to order restitution to the victims of certain offenses.

24 **B. Restitution:** The Mandatory Victim Restitution Act requires

23 superseding indictment pertaining to him are true and accurate.

22 admits that the factual allegations contained in the second

21 hereto as Exhibit A are accurate. Moreover, defendant Chivalola

20 charges and that the facts set forth in the Factual Basis attached

19 1957. The defendant agrees that he is in fact guilty of these

18 count 49, to wit: money laundering, in violation of 18 U.S.C. §

17 39, to wit: mail fraud, in violation of 18 U.S.C. § 1341, and to

16 **A. Guilty Pleas:** The defendant will plead guilty to count

15 **DEFENDANT'S OBLIGATIONS**

14 **II.**

13 sentence he will receive.

12 Court can make a binding prediction or promise regarding the

11 understands that neither the prosecutor, defense counsel, nor the

10 the obligations under this Plea Agreement. The defendant

9 withdraw his guilty plea, and he will remain bound to fulfill all of

8 by the statute, the defendant cannot, for that reason alone,

7 the Court should impose any sentence up to the maximum established

6 including the statutory maximum stated in this Plea Agreement. If

5 discretion impose any sentence it deems appropriate up to and

4 recommendations made by the government, and the Court may in its

3 the Court, the Court is under no obligation to accept any

2 Agreement. Sentencing is a matter solely within the discretion of

1 **B. Court Not a Party:** The Court is not a party to this Plea

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1 foreseeable loss as to defendant Chivola is estimated as \$866,930.  
2 The amount of restitution, if any, will be determined by the Court,  
3 but the parties agree that defendant Chivola is jointly and  
4 severally liable for the amount not to exceed \$866,930.  
5 Defendant agrees to pay restitution on a schedule to be recommended  
6 by the United States Probation Office. Defendant further agrees  
7 that he will not seek to discharge any restitution obligation or any  
8 part of such obligation in any bankruptcy proceeding.  
9 **C. Fine:** The government will not recommend a criminal fine.  
10 **D. Special Assessment:** The defendant agrees to pay a special  
11 assessment of \$200 at the time of sentencing by delivering a check  
12 or money order payable to the United States District Court to the  
13 United States Probation Office immediately before the sentencing  
14 hearing. The defendant understands that this Plea Agreement is  
15 voidable by the government if he fails to pay the assessment prior  
16 to that hearing. If the defendant is unable to pay the special  
17 assessment at the time of sentencing, he agrees to earn the money to  
18 pay the assessment, if necessary by participating in the Inmate  
19 Financial Responsibility Program.  
20 **E. Agreement to Cooperate:** The defendant agrees to cooperate  
21 fully with the government and any other federal, state, or local law  
22 enforcement agency, as directed by the government.  
23 **1. Meaning of Cooperation:** As used in this Plea  
24 Agreement, "cooperation" requires the defendant: (1) to respond  
25 truthfully and completely to all questions, whether in interviews,  
26 in correspondence, telephone conversations, before a grand jury, or  
27 at any trial or other court proceeding; (2) to never falsely  
28 incriminate or exculpate anyone; (3) to attend all meetings, grand

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1 jury sessions, trials, and other proceedings at which the  
2 defendant's presence is requested by the government or compelled by  
3 subpoena or court order; (4) to produce voluntarily any and all  
4 documents, records, or other tangible evidence requested by the  
5 government; (5) not to participate in any criminal activity while  
6 cooperating with the government; and (6) to disclose to the  
7 government the existence and status of all money, property, or  
8 assets, of any kind, derived from or acquired as a result of, or  
9 used to facilitate the commission of, the defendant's illegal  
10 activities or the illegal activities of any conspirators.  
11 After the defendant pleads guilty, the defendant and his  
12 attorney agree that the government and any law enforcement personnel  
13 may interview the defendant at any time, provided defense counsel is  
14 afforded prior notification and the opportunity to be present at the  
15 interview.

16 **2. Consequences of Failure to Cooperate:** If the  
17 defendant commits any crimes or if any of the defendant's statements  
18 or testimony prove to be knowingly false, misleading, or materially  
19 incomplete, or if the defendant otherwise violates this Plea  
20 Agreement in any way, the government will no longer be bound by its  
21 representations to the defendant concerning the limits on criminal  
22 prosecution and sentencing as set forth herein. The determination  
23 whether the defendant has violated the Plea Agreement will be under  
24 a probable cause standard.

25 If the defendant violates the Plea Agreement, he shall  
26 thereafter be subject to prosecution for any federal criminal  
27 violation of which the government has knowledge, including but not  
28 limited to perjury, false statements, and obstruction of justice.

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1 Because discloses pursuant to this Plea Agreement will constitute  
2 a waiver of the Fifth Amendment privilege against compulsory self-  
3 incrimination, any such prosecution may be premised on statements  
4 and/or information provided by the defendant. Moreover, any  
5 prosecutions that are not time-barred by the applicable statute of  
6 limitations as of the date of this Plea Agreement may be commenced  
7 in accordance with this paragraph, notwithstanding the expiration of  
8 the statute of limitations between the signing of this Plea  
9 Agreement and the commencement of any such prosecutions. The  
10 defendant agrees to waive all defenses based on the statute of  
11 limitations or delay of prosecution with respect to any prosecutions  
12 that are not time-barred as of the date of this Plea Agreement.  
13 If it is determined that the defendant has violated any  
14 provision of this Plea Agreement or if the defendant successfully  
15 moves to withdraw his plea: (1) all statements made by the  
16 defendant to the government or other designated law enforcement  
17 agents, or any testimony given by the defendant before a grand jury  
18 or other tribunal, whether before or after this Plea Agreement,  
19 shall be admissible in evidence in any criminal, civil, or  
20 administrative proceedings hereafter brought against the defendant;  
21 and (2) the defendant shall assert no claim under the United States  
22 Constitution, any statute, Rule 11(f) of the Federal Rules of  
23 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or  
24 any other federal rule, that statements made by the defendant before  
25 or after this Plea Agreement, or any leads derived therefrom, should  
26 be suppressed. By signing this Plea Agreement, the defendant waives  
27 any and all rights in the foregoing respects.  
28 **F. Restitution.** The Mandatory Victim Restitution Act requires



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1 the Court to order restitution to the victims of certain offenses.  
2 The parties have not reached an agreement as to the total amount of  
3 restitution required in this and related cases.  
4 **G. Forfeiture.** In the event that the Court does not enter a  
5 restitution order as to defendant Chiavoia in accord with Paragraph  
6 II(B), above, the defendant agrees to entry of a money judgment  
7 pursuant to Fed. R. Crim. P. 32.2(b) in an amount for which the  
8 defendant is jointly and severally liable. The government and the  
9 defendant agree that Chiavoia's personal liability is approximately  
10 \$866,930. The defendant agrees and stipulates that funds up to the  
11 amount of \$866,930 are subject to forfeiture pursuant to 18 U.S.C. §  
12 981(a)(1) and 28 U.S.C. § 2461(c), for a violation of 18 U.S.C. §§  
13 1341 and 1957.  
14 The defendant agrees to fully assist the government in the  
15 forfeiture of this property and to take whatever steps are necessary  
16 to pass clear title to the United States. The defendant agrees not  
17 to file a claim to the property in any civil proceeding,  
18 administrative or judicial, which may be initiated. The defendant  
19 agrees to waive his right to notice of any forfeiture proceeding  
20 involving this property, and agrees to not file a claim or assist  
21 others in filing a claim in that forfeiture proceeding.  
22 The defendant knowingly and voluntarily waives his right to a jury  
23 trial on the forfeiture of assets. The defendant knowingly and  
24 voluntarily waives all constitutional, legal and equitable defenses  
25 to the forfeiture of these assets in any proceeding. The defendant  
26 agrees to waive any jeopardy defense, and agrees to waive any claim  
27 or defense under the Eighth Amendment to the United States  
28 Constitution, including any claim of excessive fine, to the

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1 forfeiture of the assets by the United States, the State of  
2 California or its subdivisions.  
3 The defendant waives oral pronouncement of forfeiture at the  
4 time of sentencing, and any defects that may pertain to the  
5 forfeiture. The defendant waives personal appearance at any  
6 post-sentencing proceeding necessary to effectuate the provisions of  
7 this section.  
8  
9 **THE GOVERNMENT'S OBLIGATIONS**  
10 **A. Recommendations:**  
11 **1. Incarceration Range and Dismissals:** The government  
12 will recommend that the defendant be sentenced to the low end of the  
13 applicable guideline range for his offense as determined by the  
14 Court. Subject to the requirements of Sections II, III, and VI(B)  
15 of this Plea Agreement, at the time of judgment and sentence, the  
16 government will move to dismiss without prejudice the remaining  
17 counts of the indictment.  
18 **2. Acceptance of Responsibility:** If the United States  
19 Probation Office determines that a three-level reduction in  
20 defendant's offense level for his full and clear demonstration of  
21 acceptance of responsibility is appropriate under U.S.S.G. § 3E1.1,  
22 the government will not oppose such a reduction and will so move  
23 under §3E1.1(b), so long as the defendant pleads guilty, meets with  
24 and assists the probation officer in the preparation of the pre-  
25 sentence report, is truthful and candid with the probation officer,  
26 and does not otherwise engage in conduct that constitutes  
27 obstruction of justice within the meaning of U.S.S.G. § 3C1.1, either  
28 in the preparation of the pre-sentence report or during the

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1 sentencing proceeding.

2 **3. Reduction of Sentence for Cooperation:** The government

3 agrees to recommend at the time of sentencing that the defendant's

4 sentence of imprisonment be reduced by up to 50% of the applicable

5 guideline sentence if he provides substantial assistance to the

6 government, pursuant to U.S.S.G. § 5K1.1. The defendant understands

7 that he must comply with paragraph II (E) of this Plea Agreement.

8 The defendant understands that it is within the sole and exclusive

9 discretion of the government to determine whether the defendant has

10 provided substantial assistance. The defendant understands that the

11 government may recommend a reduction in his sentence of less than

12 50% or no reduction at all, depending upon the level of assistance

13 the government determines that the defendant has provided. If the

14 government's recommended reduction pursuant to § 5K1.1 is for a

15 sentence below the statutory mandatory minimum, the government will

16 also move the Court for a reduction below that minimum term, under

17 18 U.S.C. § 3553(e). The defendant further understands that a

18 motion pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is

19 not binding on the Court, that this Plea Agreement confers no right

20 upon the defendant to require that the government make a § 5K1.1

21 motion, and that this Plea Agreement confers no remedy upon the

22 defendant in the event that the government declines to make a

23 § 5K1.1 motion. In particular, the defendant agrees not to try to

24 file a motion to withdraw his plea based on the fact that the

25 government decides not to recommend a sentence reduction or

26 recommends a sentence reduction less than the defendant thinks is

27 appropriate.

28 If the government determines that the defendant has provided



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1 further cooperation within one year following his sentencing, the  
 2 government may move for a further reduction of his sentence under  
 3 Rule 35 of the Federal Rules of Criminal Procedure.

4 **B. Limitation on Use of Information For Sentencing:** In the  
 5 absence of a violation of the plea agreement by the defendant, the  
 6 parties agree that under Rule 11(e) (6) of the Federal Rules of  
 7 Criminal Procedure and Section 1B1.8 of the United States Sentencing  
 8 Guidelines, any incriminating information provided by the defendant  
 9 during his cooperation will not be used in determining a higher  
 10 applicable guideline range of his sentence than the government has  
 11 agreed to recommend.

12 **IV.**

13 **ELEMENTS OF THE OFFENSE**

14 **A. Elements of the Offense:** At a trial, the government would  
 15 have to prove beyond a reasonable doubt the following elements of  
 16 **mail fraud**, to which the defendant is pleading guilty:  
 17 First, the defendant knowingly participated in:  
 18 (A) a scheme and artifice to defraud, or  
 19 (B) in a plan for obtaining money or property by making false  
 20 promises or statements;  
 21 Second, the defendant knew that the scheme was misleading or  
 22 that the promises or statements were false;  
 23 Third, the scheme, and/or the promises or statements, were  
 24 material; that is, they had a natural tendency to influence, or were  
 25 capable of influencing, a person to part with money or property;  
 26 Fourth, the defendant acted with the intent to defraud; and  
 27 Fifth, the defendant used, or caused to be used, the mails to  
 28 carry out or attempt to carry out an essential part of the scheme.

1 A mailing is caused when one knows that the mails will be used  
2 in the ordinary course of business or when one can reasonably  
3 foresee such use. It does not matter whether the material mailed was  
4 itself false or deceptive so long as the mail was used as a part of  
5 the scheme, nor does it matter whether the scheme or plan was  
6 successful or that any money or property was obtained.  
7 At a trial, the government would also have to prove beyond a  
8 reasonable doubt the following elements of **money laundering**, to  
9 which the defendant is pleading guilty:

10 (1) The defendant engaged or attempted to engage in a monetary  
11 transaction;  
12 (2) The defendant knew the transaction involved criminally  
13 derived property;  
14 (3) The property had a value greater than \$10,000;  
15 (4) The property was derived from mail fraud, wire fraud, or  
16 making false statements to financial institutions; and  
17 (5) The transaction occurred in the United States.

18 The term "monetary transaction" means the deposit, withdrawal,  
19 transfer or exchange, in or affecting interstate commerce, of funds  
20 or a monetary instrument by, through, or to a financial institution.  
21 The term "financial institution" means any entity listed in Title  
22 31, United States Code, Section 5312(a) (2).

23 V.

24 **MAXIMUM SENTENCE**

25 **A. Maximum Penalty:** For mail fraud, the maximum sentence that  
26 the Court can impose is twenty years imprisonment, a fine of  
27 \$250,000, a three year period of supervised release, and a special  
28 assessment of \$100. For money laundering, the maximum sentence that

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1 the Court can impose a ten years imprisonment, a fine of \$250,000  
 2 (or an alternate fine of double the amount laundered), a three year  
 3 period of supervised release, and a special assessment of \$100. By  
 4 signing this Plea Agreement, the defendant also agrees that the  
 5 Court can order the payment of restitution for the full loss caused  
 6 by the defendant's wrongful conduct. The defendant agrees that the  
 7 restitution order is not restricted to the amounts alleged in the  
 8 specific counts to which the defendant is pleading guilty. The  
 9 defendant further agrees that he will not attempt to discharge in  
 10 any present or future bankruptcy proceeding any restitution imposed  
 11 by the Court.

**B. Violations of Supervised Release:** The defendant understands  
 12 and agrees that if he violates a condition of supervised release at  
 13 any time during the term of supervised release, the Court may revoke  
 14 the term of supervised release and require the defendant to serve up  
 15 to two additional years imprisonment.

**VI.**

**SENTENCING DETERMINATION**

**A. Statutory Authority:** The defendant understands that the  
 19 Court must consult the Federal Sentencing Guidelines (as promulgated  
 20 by the Sentencing Commission pursuant to the Sentencing Reform Act  
 21 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as  
 22 modified by United States v. Booker and United States v. Fanfan,  
 23 543 U.S. 220, 125 S.Ct. 738 (2005), Rita v. United States, 127 S.Ct.  
 24 2456 (2007), Gall v. United States, 128 S.Ct. 586 (2007), Kimbrough  
 25 v. United States, 128 S.Ct. 558 (2007)) and must take them into  
 26 account when determining a final sentence. The defendant  
 27 understands that the Court will determine a non-binding and advisory  
 28

1 guideline sentencing range for this case pursuant to the Sentencing  
 2 Guidelines. The defendant further understands that the Court will  
 3 consider whether there is a basis for departure from the guideline  
 4 sentencing range (either above or below the guideline sentencing  
 5 range) because there exists an aggravating or mitigating  
 6 circumstance of a kind, or to a degree, not adequately taken into  
 7 consideration by the Sentencing Commission in formulating the  
 8 Guidelines. The defendant further understands that the Court, after  
 9 consultation and consideration of the Sentencing Guidelines, must  
 10 impose a sentence that is reasonable in light of the factors set  
 11 forth in 18 U.S.C. § 3553(a).  
 12 **B. Stipulations Affecting Guidelines Calculation:** The  
 13 government and the defendant agree that there is no material dispute  
 14 as to the following sentencing guidelines variables and therefore  
 15 stipulate to the following:  
 16 **1. Count 39: 18 U.S.C. § 1341 (Mail Fraud).**  
 17 **a. Base Offense Level:** The base offense level is 7,  
 18 under U.S.S.G. § 2B1.1(a) (1).  
 19 **b. Specific Offense Characteristics (Loss):** The loss  
 20 figure foreseeable to defendant Chiavola is approximately  
 21 \$866,930; accordingly, a 14 level increase applies.  
 22 §2B1.1(b) (1) (H).  
 23 **c. Specific Offense Characteristics (Number of**  
 24 **victims):** Less than separate victims were affected by  
 25 defendant Chiavola, so no increase applies under  
 26 §2B1.1(b) (2) (a).  
 27 **d. Sophisticated Means Adjustment:** The offense  
 28 involved the use of sophisticated means under U.S.S.G.

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1     §2B1.1(b) (9), so a two level increase applies. No additional  
2     specific offense characteristics apply under any subdivision of  
3     §2B1.1(b).

4     **e. Chapter Three Adjustments:** There are no  
5     applicable adjustments pursuant to Chapter Three, Parts A-C of  
6     the U.S.S.G. Thus, the offense level for Count 39 is 23.  
7     **2. Count 49: 18 U.S.C. § 1957 (Money Laundering).**  
8     **a. Base Offense Level:** The base offense level is 23  
9     under §2S1.1(a) (1).

10    **b. Specific Offense Characteristics:** Because the  
11    offense violated 18 U.S.C. §1957, a 1 level adjustment applies  
12    under §2S1.1(b) (2) (A). No additional specific offense  
13    characteristic apply under any subdivision of §2S1.1(b).

14    **c. Chapter Three Adjustments:** There are no applicable  
15    adjustments pursuant to Chapter Three, Parts A-C of the  
16    U.S.S.G. Thus, the offense level for Count 49 is 24.

17    **3. Chapter Three Multiple Count Grouping.**  
18    **a. Groups of Closely Related Counts:** Under §3D1.2(d),  
19    Counts 39 and 49 constitute a single group.  
20    **b. Offense Level Applicable to Each Group:** Under  
21    §3D1.3(b) the highest offense level in the group is 24, and the  
22    offense level applicable to the group is therefore also 24.  
23    **c. Combined Offense Level:** Under §3D1.4, the offense  
24    level applicable to the grouped counts is 24.

25    **4. Acceptance of Responsibility:** -3, subject to the  
26    requirements of paragraph III(A) (2), above.

27    **5. Criminal History:** The defendant's criminal history  
28    will be determined by the Probation Officer's score of the



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1 defendant's criminal history under Chapter Four of the United  
 2 States Sentencing Guidelines.  
 3 **6. Departures:** The parties stipulate and agree that they  
 4 will not seek or argue in support of any other specific offense  
 5 characteristics, Chapter Three adjustments (other than the  
 6 decrease for "Acceptance of Responsibility", or cross-  
 7 references, except for those specifically addressed in  
 8 Paragraphs VI (B) (1)-(5), above, with the sole exception that  
 9 the government alone, in its sole discretion, may make a motion  
 10 for a downward departure under Section 5K1.1 as discussed above  
 11 in Paragraph III(A) (3).  
 12 **7. Variances or Deviations:** The parties both agree not  
 13 to move for, or argue in support of, any variance or deviance  
 14 from the Sentencing Guidelines under either 18 U.S.C. § 3553(a)  
 15 or United States v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005),  
 16 except pursuant to U.S.S.G. § 5K1.1. If either party breaches  
 17 this provision, the other party shall be relieved of all of its  
 18 obligations under this Plea and Cooperation Agreement.  
 19 **VII.**  
 20 **WAIVERS**  
 21 **A. Waiver of Constitutional Rights:** The defendant understands  
 22 that by pleading guilty he is waiving the following constitutional  
 23 rights:  
 24 **1. Public and Speedy Trial:** If defendant were to  
 25 continue with his plea of not guilty to the charges in the  
 26 indictment, he would be entitled to a public and speedy trial.  
 27 **2. Jury Trial, Presumption of Innocence, Unanimous**  
 28 **Verdict:** The defendant has an absolute right to a jury trial. At

1 that trial, the jury would be instructed that the defendant is  
2 presumed innocent and that he carries that presumption throughout  
3 the trial until such time as the government overcomes the  
4 presumption by evidence adduced at the trial. The jury would be  
5 further instructed that it could not convict the defendant unless  
6 all twelve jurors agreed that the government had proved guilt beyond  
7 a reasonable doubt.

8 **3. Confrontation of Witnesses:** At the trial, the  
9 defendant would be entitled to see, hear and confront the witnesses  
10 and the evidence against him. These witnesses would be testifying  
11 under the penalty of perjury and would be subject to  
12 cross-examination by the defendant's attorney.

13 **4. Compulsory Process:** At the trial, the defendant would  
14 be entitled to present witnesses and other evidence on his own  
15 behalf and, if the witnesses refused to appear voluntarily, the  
16 defendant would be entitled to use the Court's process to compel  
17 their attendance.

18 **5. Privilege Against Self Incrimination:** At a trial, the  
19 defendant would have a privilege against self-incrimination so that  
20 he could not be compelled to testify and the jury could be  
21 instructed that no inference of guilt could be drawn from the  
22 defendant's failure to testify.

23 **6. Right to Appeal:** If, after a trial, the defendant  
24 were convicted, he would have a right to appeal the conviction.

25 **7. Representation of Counsel:** The defendant is entitled  
26 to be represented by competent counsel through all stages of the  
27 case, including appeal, and if the defendant could not afford an  
28 attorney one would be appointed for him by the Court.

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1 Defendant understands that by pleading guilty he is waiving all  
2 of the rights set forth above. Defendant's attorney has explained  
3 those rights to him and the consequences of his waiver of those  
4 rights and the defendant freely and voluntarily consents to said  
5 waiver.

6 **B. Waiver of Appeal and Collateral Attack:** The defendant  
7 understands that the law gives him a right to appeal his conviction  
8 and sentence. He agrees as part of his plea, however, to give up  
9 the right to appeal the conviction. So long as his sentence is no  
10 longer than the top of the Sentencing Guidelines range determined by  
11 the Court consistent with the stipulations set forth above about the  
12 Sentencing Guidelines variables, the defendant also agrees as part  
13 of his plea to give up the right to appeal all aspects of the  
14 sentence imposed. Defendant specifically gives up his right to  
15 appeal any order of restitution the Court may impose.

16 Regardless of the sentence he receives, the defendant also  
17 gives up any right he may have to bring a post-appeal attack on his  
18 conviction or his sentence. He specifically agrees not to file a  
19 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or  
20 sentence.

21 If the defendant ever attempts to vacate his plea, dismiss the  
22 underlying charges, or reduce or set aside his sentence on any of  
23 the counts to which he is pleading guilty, the government shall have  
24 the right (1) to prosecute the defendant on any of the counts to  
25 which he pleaded guilty; (2) to reinstate any counts that may be  
26 dismissed; and (3) to file any new charges that would otherwise be  
27 barred by this Plea Agreement. The decision to pursue any or all of  
28 these options is solely in the discretion of the United States

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28 and completely sets forth the entirety of the agreement. I concur  
27 discussed it fully with my client. The Plea Agreement accurately  
26 **A. Defense Counsel:** I have read this Plea Agreement and have

**APPROVALS AND SIGNATURES**

**IX.**

23 States.  
22 defendant, counsel for the defendant, and counsel for the United  
21 condition exist unless it is committed to writing and signed by the  
20 exists, nor will such agreement, understanding, promise, or  
19 promise, or condition between the government and the defendant  
18 Other than this Plea Agreement, no agreement, understanding,

**ENTIRE PLEA AGREEMENT**

**VIII.**

15 dismissed).  
14 dismissed pursuant to this Plea Agreement and any charges previously  
13 related allegations (including without limitation any charges to be  
12 prosecution of all charges in the above-captioned matter and of any  
11 litigation expenses in connection with the investigation and  
10 105-119 (Nov. 26, 1997), to recover attorneys' fees or other  
9 to waive all rights under the "Hyde Amendment," Section 617, P.L.  
8 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees  
7 Clause of the Sixth Amendment.

6 any objections based on the Speedy Trial Act or the Speedy Trial  
5 counts including, but not limited to, any statutes of limitation or  
4 any objections based on the passage of time with respect to such  
3 to the government's decision. In particular, he agrees not to raise  
2 agrees to waive any objections, motions, and defenses he might have  
1 Attorney's Office. By signing this Plea Agreement, the defendant

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1 in my client's decision to plead guilty as set forth in this Plea

2 Agreement.

3 DATED:

2/16/11

Emily Doringel  
Attorney for Defendant

5 **B. Defendant:** I have read this Plea Agreement and carefully

6 reviewed every part of it with my attorney. I understand it, and I

7 voluntarily agree to it. Further, I have consulted with my attorney

8 and fully understand my rights with respect to the provisions of the

9 Sentencing Guidelines that may apply to my case. No other promises

10 or inducements have been made to me, other than those contained in

11 this Plea Agreement. In addition, no one has threatened or forced

12 me in any way to enter into this Plea Agreement. Finally, I am

13 satisfied with the representation of my attorney in this case.

15 DATED:

2/16/11

Christopher M. Chiavola,  
Defendant

17 **C. Attorney for United States:** I accept and agree to this

18 Plea Agreement as to defendant Chiavola on behalf of the government.

20 DATED:

Feb. 25, 2011

BENJAMIN B. WAGNER  
United States Attorney

By:

RUSSELL L. CARLBERS

Assistant U.S. Attorney



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28 employment information, such as fictitious employers or, at the  
 27 Many times these loan files would rely on the use of false  
 26 so that buyers of the inflated homes could qualify for homes loans.  
 25 brokerages, would falsify loan applications and supporting documents  
 24 employees of NCII, in conjunction with employees at various mortgage  
 23 In addition to falsifying the sales price, Gilliland and  
 22 the undisclosed sales rebate to buyers.  
 21 account controlled by Gilliland. Gilliland would pay a portion of  
 20 a check directly from their bank accounts to NCII or another bank  
 19 usually the day after the close of escrow, the builders would issue  
 18 Lenders would finance 100% of the inflated purchase price.  
 17 performed.  
 16 seller were disclosed, they were falsely represented as work  
 15 lenders and appraisers. Those rare occasions where credits to the  
 14 With only a few exceptions, the rebates were entirely concealed from  
 13 rebate significant sums back to the buyer or the buyer's agent.  
 12 builders Anthony G. Symmes, William E. Baker, and others, would  
 11 at artificially inflated sales prices. After the close of escrow,  
 10 from builders who were willing to sell homes in Chico, California,  
 9 paid money to recruit straw buyers and others to purchase new homes  
 8 Consultants. Chivola, along with other employees of Gilliland, was  
 7 Investments, Inc. (NCII), which did business as Creative Funding  
 6 Chivola worked for Gilliland's company, Nor Cal Innovative  
 5 ("Gilliland"), an unlicensed mortgage broker (and now co-defendant).  
 4 working as a lead generator for Garret Griffith Gilliland III  
 3 In 2006, defendant Christopher M. Chivola ("Chivola") began

**Factual Basis for Plea**

**EXHIBIT "A"**

**PLEA AGREEMENT AS TO DEF. CHIAVOLA**

1 least, exaggerated incomes to get the loans to close.  
2 In all cases, the above techniques for getting houses to close  
3 escrow deceived lenders. These lenders would not have lent money to  
4 the home buyers had the borrowers' true financial status been  
5 disclosed or had the existence of undisclosed sales rebates been  
6 disclosed.  
7 In or around April 2007, Chiavola and several other employees  
8 parted ways with Gilliland. Chiavola conspired with licensed real  
9 estate professional Keshha Haynie, and others, including Brandon  
10 Resendez and Niche Fortune, to replicate the cash-back, or inflated  
11 sales price aspect of the Gilliland scheme, but without Gilliland's  
12 participation. These conspirators set up their own front companies  
13 to function similar to Gilliland's NCI. Chiavola set up CMC  
14 Property Management. Resendez set up Plan B Group. Niche Fortune  
15 and Keshha Haynie set up Fortune Property Investments. Lenders would  
16 finance 100% of the inflated purchase price. Usually the day after  
17 the close of escrow, Symmes would issue a check directly from one of  
18 his bank accounts to the entities controlled by Chiavola, Resendez,  
19 and Fortune. From approximately April 2007 through December 2007,  
20 working with builder Anthony G. Symmes, Chiavola, Resendez, Haynie  
21 and Fortune closed on eight properties in this fashion.  
22 In the loan and/or escrow files, there are a number of mailings  
23 of closing documents and payoff checks originating in the Eastern  
24 District of California in furtherance of the fraud. Also, the Butte  
25 County Recorder's Office records reveal that, in connection with  
26 every fraudulent loan, Grant Deeds were sent through the United  
27 States mail in furtherance of the scheme. These mailings furthered  
28 the fraud scheme because the mailings were integral to the real

21  
PLEA AGREEMENT AS TO DEF. CHIAVOLOA

1 estate closing process. These mailings were foreseeable by  
2 defendant Chialvola.  
3 Chialvola also conducted a monetary transaction in funds  
4 exceeding \$10,000 derived from the proceeds of mail fraud. For  
5 instance, on or about June 20, 2007, in the State and Eastern  
6 District of California, Chialvola knowingly purchased official check  
7 #106815676 for \$12,500 drawn on CMC Property Management's Washington  
8 Mutual Bank account number ending 5676, made payable to Chris M.  
9 Chialvola, the proceeds of which were derived from mail fraud, in  
10 violation of 18 U.S.C. § 1341. Washington Mutual Bank was a  
11 federally insured financial institution at the time of the monetary  
12 transaction.  
13 The total foreseeable loss attributable to defendant Chialvola  
14 is approximately \$866,930.

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