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CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY CLERK

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**ORIGINAL**

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

11	UNITED STATES OF AMERICA,	)	CASE NO. 2:10-CR-0210 WBS
12	Plaintiff,	)	<b>PLEA AGREEMENT</b>
13	v.	)	DATE: September 4, 2012
14	ROBERT E. ROSENAU,	)	TIME: 9:30 a.m.
15	Defendant.	)	COURT: HON. WILLIAM B. SHUBB
16		)	
17		)	

I.

**INTRODUCTION**

**A. Scope of Agreement:** The indictment in this case charges the defendant with violations of Title 18, United States Code, section 371 and 1341, mail fraud and conspiracy to commit mail fraud. This document contains the complete plea agreement between the United States Attorney's Office for the Eastern District of California (the "government") and the defendant regarding this case. This plea agreement is limited to the United States Attorney's Office for the Eastern District of California and cannot bind any other federal,

1 state, or local prosecuting, administrative, or regulatory  
2 authorities.

3 **B. Court Not a Party:** The Court is not a party to this plea  
4 agreement. Sentencing is a matter solely within the discretion of  
5 the Court, the Court is under no obligation to accept any  
6 recommendations made by the government, and the Court may in its  
7 discretion impose any sentence it deems appropriate up to and  
8 including the statutory maximum stated in this plea agreement. If  
9 the Court should impose any sentence up to the maximum established by  
10 the statute, the defendant cannot, for that reason alone, withdraw  
11 his guilty plea, and he will remain bound to fulfill all of the  
12 obligations under this plea agreement. The defendant understands  
13 that neither the prosecutor, defense counsel, nor the Court can make  
14 a binding prediction or promise regarding the sentence he will  
15 receive.

16 **II.**

17 **DEFENDANT'S OBLIGATIONS**

18 **A. Guilty Plea:** The defendant will plead guilty to the sole  
19 count of the Superseding Information, mail fraud in violation of  
20 Title 18, United States Code section 1341. The defendant agrees that  
21 he is in fact guilty of that charge and that the facts set forth in  
22 the Factual Basis For Plea attached hereto as Exhibit A are accurate.

23 **1. Waiver of Indictment:** The defendant agrees that, at  
24 the entry of plea proceeding, he will sign a written waiver of  
25 prosecution by indictment and consent to proceed by information  
26 rather than by indictment.

27 **B. Restitution:** The Mandatory Victim Restitution Act requires  
28 the Court to order restitution to the victims of certain offenses. 18

1 U.S.C. § 3663A. The Victim Witness Protection Act permits the Court  
2 to order restitution to victims of offenses other than the counts of  
3 conviction, where the parties so agree in a plea agreement. 18

4 U.S.C. § 3663(a)(1)(A). The defendant agrees to pay restitution to  
5 the victims identified in the Factual Basis to the Plea, attached as  
6 Exhibit A to this agreement, who are identified both in the sole  
7 count of the superseding information in this case and Count 3 of the  
8 indictment (victims C.H. and K.H.), in the amount of \$50,000, and in  
9 Count 4 of the indictment (victims M.H. and V.K.H.), in the amount of  
10 \$100,000.

11 Payment should be by cashier's or certified check made payable  
12 to the Clerk of the Court. Defendant further agrees that he will not  
13 seek to discharge any restitution obligation or any part of such  
14 obligation in any bankruptcy proceeding.

15 **C. Fine:** The defendant agrees to pay a fine as ordered by the  
16 Court. The defendant understands that this plea agreement is  
17 voidable by the government if he fails to pay the fine as required by  
18 this plea agreement.

19 **D. Special Assessment:** The defendant agrees to pay a special  
20 assessment of \$100.00 at the time of sentencing by delivering a check  
21 or money order payable to the United States District Court to the  
22 United States Probation Office immediately before the sentencing  
23 hearing. The defendant understands that this plea agreement is  
24 voidable by the government if he fails to pay the assessment prior to  
25 that hearing. If the defendant is unable to pay the special  
26 assessment at the time of sentencing, he agrees to earn the money to  
27 pay the assessment, if necessary by participating in the Inmate  
28 Financial Responsibility Program.

1 **III.**

2 **THE GOVERNMENT'S OBLIGATIONS**

3 **A. Dismissals:** The government agrees to move, at the time of  
4 sentencing, to dismiss without prejudice the counts in the pending  
5 indictment. The government also agrees not to reinstate any  
6 dismissed count except as provided in paragraphs VII.B. below.

7 **B. Recommendations:**

8 **1. Incarceration Range:** The government will recommend  
9 that the defendant be sentenced to the low end of the applicable  
10 guideline range for his offense as determined by the Court.

11 **2. Acceptance of Responsibility:** If the United States  
12 Probation Office determines that a three-level reduction in the  
13 defendant's offense level for his full and clear demonstration of  
14 acceptance of responsibility is appropriate under U.S.S.G. § 3E1.1,  
15 the government will not oppose such a reduction and will so move  
16 under § 3E1.1(b), so long as the defendant pleads guilty, meets with  
17 and assists the probation officer in the preparation of the pre-  
18 sentence report, is truthful and candid with the probation officer,  
19 and does not otherwise engage in conduct that constitutes obstruction  
20 of justice within the meaning of U.S.S.G § 3C1.1, either in the  
21 preparation of the pre-sentence report or during the sentencing  
22 proceeding.

23 **C. Government's Duties to the Court:** Notwithstanding the  
24 provisions of this agreement, the defendant understands and agrees  
25 that the government has a duty of candor to the Court and to the  
26 Probation Officer. Such duty includes the obligation to provide full  
27 and accurate information upon request. *United States v. Allen*, 434  
28 F.3d 1166, 1175 (9th Cir. 2006) ("[A] plea agreement does not bar

1 the government from honestly answering the district court's  
2 questions. To the contrary, honest response of the government to  
3 direct judicial inquiry is a prosecutor's professional obligation  
4 that cannot be barred, eroded or impaired by a plea agreement."").  
5 The government also has an affirmative duty to correct the record in  
6 the event factual inaccuracies or partial truths come before the  
7 Court. *United States v. Block*, 660 F.2d 1086, 1090-92 (5th Cir.  
8 1981). Accordingly, the government is free to provide full, accurate  
9 information to the Court and Probation, including answering any  
10 inquiries made by the Court and/or Probation and rebutting any  
11 inaccurate statements or arguments by the defendant or his attorney  
12 or by Probation or the Court. The defendant also understands and  
13 agrees that nothing in this Plea Agreement bars the government from  
14 defending on appeal or collateral review any sentence that the Court  
15 may impose.

16 **IV.**

17 **ELEMENTS OF THE OFFENSE**

18 **A. Elements of the Offense:** At a trial, the government would  
19 have to prove beyond a reasonable doubt the following elements of the  
20 offense to which the defendant is pleading guilty, mail fraud under  
21 Title 18, United States Code section 1341:

22 First, the defendant knowingly participated in an artifice or  
23 plan to defraud, or an artifice or plan for obtaining money or  
24 property by means of false or fraudulent pretenses, representations,  
25 or promises;

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

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

3 Fourth, the defendant used, or caused to be used, the mails to  
4 carry out or attempt to carry out an essential part of the artifice  
5 or plan.

6 V.

7 **MAXIMUM SENTENCE**

8 **A. Maximum Penalty:** The maximum sentence that the Court can  
9 impose is 20 years of incarceration, a fine of \$250,000, a 3 year  
10 period of supervised release and a special assessment of \$100. By  
11 signing this plea agreement, the defendant also agrees that the Court  
12 can order the payment of restitution for the full loss caused by the  
13 defendant's wrongful conduct. The defendant further agrees that he  
14 will not attempt to discharge in any present or future bankruptcy  
15 proceeding any restitution imposed by the Court.

16 **B. Violations of Supervised Release:** The defendant understands  
17 that if he violates a condition of supervised release at any time  
18 during the term of supervised release, the Court may revoke the term  
19 of supervised release and require the defendant to serve up to 2  
20 additional years imprisonment.

21 VI.

22 **SENTENCING DETERMINATION**

23 **A. Statutory Authority:** The defendant understands that the  
24 Court must consult the Federal Sentencing Guidelines (as promulgated  
25 by the Sentencing Commission pursuant to the Sentencing Reform Act of  
26 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as  
27 modified by United States v. Booker and United States v. Fanfan,  
28 543 U.S. 220 (VI), 125 S.Ct. 738 (2005)) and must take them into

1 account when determining a final sentence. The defendant understands  
2 that the Court will determine a non-binding and advisory guideline  
3 sentencing range for this case pursuant to the Sentencing Guidelines.  
4 The defendant further understands that the Court will consider whether  
5 there is a basis for departure from the guideline sentencing range  
6 (either above or below the guideline sentencing range) because there  
7 exists an aggravating or mitigating circumstance of a kind, or to a  
8 degree, not adequately taken into consideration by the Sentencing  
9 Commission in formulating the Guidelines. The defendant further  
10 understands that the Court, after consultation and consideration of  
11 the Sentencing Guidelines, must impose a sentence that is reasonable  
12 in light of the factors set forth in 18 U.S.C. § 3553(a).

13 **B. Stipulations Affecting Guidelines Calculation:** The  
14 government and the defendant agree that there is no material dispute  
15 as to the following sentencing guidelines variables and therefore  
16 stipulate to the following:

17 **1. Base Offense Level:** 7 (USSG § 2B1.1)

18 **2. Victim-related Adjustments:** +10 (USSG § 2B1.1, losses of  
19 \$150,000, including the count of conviction and related conduct  
20 as described in Count 4 of the indictment)

21 **3. Adjusted Offense Level:** 17

22 **4. Acceptance of Responsibility:** See paragraph III(B)(2)  
23 above

24 **5. Criminal History:** I

25 **6. Departures or Other Enhancements or Reductions:** The  
26 parties stipulate and agree that they will not seek or argue in  
27 support of any other specific offense characteristics, Chapter Three  
28 adjustments (other than the decrease for "Acceptance of

1 Responsibility"), or cross-references. Both parties stipulate and  
2 agree not to move for, or argue in support of, any departure from the  
3 Sentencing Guidelines, or any deviance or variance from the Sentencing  
4 Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct. 738  
5 (2005).

6 **VII.**

7 **WAIVERS**

8 **A. Waiver of Constitutional Rights:** The defendant understands  
9 that by pleading guilty he is waiving the following constitutional  
10 rights: (a) to plead not guilty and to persist in that plea if  
11 already made; (b) to be tried by a jury; (c) to be assisted at trial  
12 by an attorney, who would be appointed if necessary; (d) to subpoena  
13 witnesses to testify on his behalf; (e) to confront and cross-examine  
14 witnesses against him; and (f) not to be compelled to incriminate  
15 himself.

16 **B. Waiver of Appeal and Collateral Attack:** The defendant  
17 understands that the law gives him a right to appeal his conviction  
18 and sentence. He agrees as part of his plea, however, to give up the  
19 right to appeal the conviction right to appeal the conviction in this  
20 case. He also agrees to give up the right to appeal any aspect of the  
21 sentence imposed in this case except for any ruling or provision that  
22 is inconsistent with the stipulations of the parties. If the Court  
23 deviates from the stipulations of the parties on sentencing factors,  
24 the defendant may bring an appeal only in regard to such deviations;  
25 in this event he understands and agrees that the Government has no  
26 limitation on its ability to argue in support of the sentence as  
27 imposed by the Court. The defendant specifically gives up his right to  
28 appeal any order of restitution the Court may impose.




1 The defendant also gives up any right he may have to bring a  
2 post-appeal attack on his conviction or his sentence. He specifically  
3 agrees not to file a motion under 28 U.S.C. § 2255 or § 2241 attacking  
4 his conviction or sentence.

5 Notwithstanding the agreement in paragraph III. A. above that the  
6 government will move to dismiss counts against the defendant, if the  
7 defendant ever attempts to vacate his plea, dismiss the underlying  
8 charges, or reduce or set aside his sentence on any of the counts to  
9 which he is pleading guilty, the government shall have the right (1)  
10 to prosecute the defendant on any of the counts to which he pleaded  
11 guilty; (2) to reinstate any counts that may be dismissed pursuant to  
12 this plea agreement; and (3) to file any new charges that would  
13 otherwise be barred by this plea agreement. The decision to pursue  
14 any or all of these options is solely in the discretion of the United  
15 States Attorney's Office. By signing this plea agreement, the  
16 defendant agrees to waive any objections, motions, and defenses he  
17 might have to the government's decision. In particular, he agrees not  
18 to raise any objections based on the passage of time with respect to  
19 such counts including, but not limited to, any statutes of limitation  
20 or any objections based on the Speedy Trial Act or the Speedy Trial  
21 Clause of the Sixth Amendment.

22 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees to  
23 waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119  
24 (Nov. 26, 1997), to recover attorneys' fees or other litigation  
25 expenses in connection with the investigation and prosecution of all  
26 charges in the above-captioned matter and of any related allegations  
27 (including without limitation any charges to be dismissed pursuant to  
28 this plea agreement and any charges previously dismissed).



1 DATED: 9/4/2012

  
JEFFREY STANIELS  
Attorney for Defendant

2  
3 **B. Defendant:** I have read this plea agreement and carefully  
4 reviewed every part of it with my attorney. I understand it, and I  
5 voluntarily agree to it. Further, I have consulted with my attorney  
6 and fully understand my rights with respect to the provisions of the  
7 Sentencing Guidelines that may apply to my case. No other promises or  
8 inducements have been made to me, other than those contained in this  
9 plea agreement. In addition, no one has threatened or forced me in  
10 any way to enter into this plea agreement. Finally, I am satisfied  
11 with the representation of my attorney in this case.

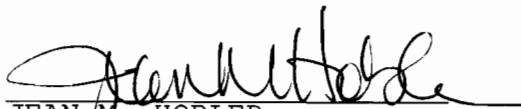
12  
13 DATED: 8-24-12

  
ROBERT E . ROSENAU, Defendant

14  
15 **C. Attorney for United States:** I accept and agree to this plea  
16 agreement on behalf of the government.

17 DATED: 9/4/2012

BENJAMIN B. WAGNER  
United States Attorney

18  
19  
20 By:   
JEAN M. HOBLER  
JILL M. THOMAS  
Assistant U.S. Attorney

**EXHIBIT "A"****Factual Basis for Plea**

1  
2  
3  
4 In and before 2007, defendant ROBERT E. ROSENAU (ROSENAU) was  
5 employed with Rosenau Investments, Inc. (RII), a real estate  
6 investment company founded and run for years by ROSENAU's father  
7 (R.R.) and mother (D.R.). RII was a hard money lender, specializing  
8 in short term loans for real estate rehabilitation in anticipation of  
9 sales of the rehabilitated properties. RII obtained the money for  
10 loans from individual investors tied to specific properties.  
11 Investors were paid from monthly payments by borrowers and/or when a  
12 property was sold. RII told its investors that it did not loan money  
13 on properties with a loan to value ratio of over 70% and that it  
14 maintained a lien on the properties in a primary position.

15  
16 From at least the year 2000, ROSENAU was responsible for  
17 interacting with the borrowers of RII, including obtaining payments  
18 from them when they were delinquent in their obligations, while either  
19 R.R. or D.R., depending on the time frame, were responsible for  
20 interacting with investors. In 2007, due to various family illnesses  
21 including that of R.R. and of D.R.'s parents, according to the  
22 company's bookkeeper and receptionist ROSENAU became in fact primarily  
23 responsible for the operations of the company, including interacting  
24 with investors as well as borrowers, including affirmatively  
25 contacting existing investors to solicit new funds. ROSENAU continued  
26 in this role until mid-February 2008. During an interview with an FBI  
27 agent, ROSENAU indicated that in 2007 he was aware that the year was  
28 not "working out well" for RII, but was optimistic things would turn  
around and/or the government would take measures to prevent further  
real estate declines. He also indicated that he knew RII investments  
were advertised to investors as no more than 70 percent loan to value  
ratio.

**INVESTORS M.H. and V.K.H.**

19  
20 Investors M.H. and V.K.H., a husband and wife, had invested with  
21 RII since 2002 and understood the general principles of the loans made  
22 by RII as described above. On January 30, 2008, M.H. and V.K.H. made  
23 a new \$100,000 investment with RII. Shortly before investing, M.H.  
24 contacted ROSENAU, who told M.H. that things were going well and new  
25 loans were available for a proposed new investment. M.H. and V.K.H.'s  
26 January 30, 2008 investment was made based upon that understanding.  
27 ROSENAU caused two promissory notes to be mailed by RII to M.H. and  
28 V.K.H. on or about February 4, 2008, for \$50,000 each, indicating that  
the \$100,000 investment had been evenly split between two properties,  
one on Marianas Way in Cottonwood, California and another on Ardley  
Avenue in Oakland, California. These were not new investments.

26 RII provided an initial loan of \$325,000 in regard to the  
27 Marianas Way property on October 15, 2005. The borrowers made  
28 payments irregularly (late, sometimes several months late and multiple  
payments made in a single month) until December 2006. No payments by  
the borrowers were made after December 2006. RII, through ROSENAU as

1 its self-identified chief financial officer, modified the recorded  
2 note on December 5, 2006, to increase the principle balance to  
3 \$405,000, with payments due beginning on February 1, 2007, with all  
4 interest and principle due on March 1, 2007. Despite the new loan  
5 terms, no further payments were made by the borrower. RII, through  
6 ROSENAU, began foreclosure proceedings on the Marianas property no  
7 later than November 2007. Nonetheless, RII's Promissory Note to M.H.  
8 and V.K.H. was tied to this property, on which no payments had been  
9 received for over one year and which RII had already begun foreclosure  
10 proceedings upon.

11 RII provided an initial loan of \$624,000 in regard to the Ardley  
12 Avenue property on November 6, 2005. The borrower made payments on  
13 the loan through January 2007, and not after. The property was  
14 foreclosed upon on December 21, 2007, approximately one month before  
15 M.H. and V.K.H. invested \$50,000 with RII in regard to this property  
16 upon the representation by ROSENAU that their funds would be applied  
17 to a "new investment."

18 Investors C.H. and K.H.

19 Investors C.H. and K.H., a husband and wife, first invested with  
20 RII in May 2007, after meeting with ROSENAU in April 2007. At that  
21 meeting, ROSENAU advised C.H. and K.H. that the investments were in  
22 properties that were "overly secured," giving the example that if an  
23 RII loan for a particular property was for \$100,000, the RII deed of  
24 trust would "tie up" \$300,000 worth of collateral. In January 2008,  
25 C.H. and K.H. wished to invest additional funds in the amount of  
26 \$50,000. They spoke with ROSENAU on or about January 15, 2008, and  
27 specifically asked if RII was having problems collecting on its loans  
28 from the borrowers. ROSENAU advised that there were no problems with  
collections from borrowers, and that despite the then recent nation-  
wide mortgage issues all RII investments were "holding up well." These  
statements were not true and were material to the investment decisions  
of C.H. and K.H. In reliance on these statements, C.H. and K.H.  
provided ROSENAU with a check for \$50,000 on or about January 18,  
2008. ROSENAU caused a promissory note to be mailed by RII to C.H.  
and K.H. on or about January 22, 2008, indicating a loan in relation  
to "Lake Blvd (Lots)." The Lake Boulevard lots were owned by Rosenau-  
Lahr, a company in which ROSENAU was a partner. According to  
ROSENAU's conversation with FBI agents in 2009, Rosenau-Lahr purchased  
the property for \$130,000, and the initial RII loan on the property  
was \$150,000, a significantly higher than 70 percent loan to value  
ratio. Moreover, from the initial loan until the collapse of RII's  
business in early 2008, RII loaned approximately \$2 million to  
Rosenau-Lahr for this project, rendering the loan rather less than  
"overly secured," particularly since these loans were not secured by a  
deed of trust until late February 2008, after C.H. and K.H. invested  
with RII. Moreover, ROSENAU admitted that he converted \$45,000 of the  
RII loans to his personal use, and diverted loan funds to a different  
Rosenau-Lahr project.